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**"THE LAND IS OUR FAMILY AND THE WATER IS OUR BLOODLINE":  
THE DISPOSSESSION AND PRESERVATION OF HEIRS' PROPERTY  
IN THE GULLAH-GEECHEE COMMUNITIES OF LOWCOUNTRY  
SOUTH CAROLINA**

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DISSERTATION

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A dissertation submitted in partial fulfillment of the  
requirements for the degree of Doctor of Philosophy  
in the College of Arts and Sciences  
at the University of Kentucky

By  
Brian Grabbatin

Lexington, Kentucky

Director: Dr. Richard H. Schein, Professor of Geography

Lexington, Kentucky

2016

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## ABSTRACT OF DISSERTATION

### “THE LAND IS OUR FAMILY AND THE WATER IS OUR BLOODLINE”: THE DISPOSSESSION AND PRESERVATION OF HEIRS’ PROPERTY IN THE GULLAH-GEECHEE COMMUNITIES OF LOWCOUNTRY SOUTH CAROLINA

Heirs’ property is land that is collectively inherited by family members when an ancestor dies without a will. The complexity and ambiguity of rights among family members makes these parcels legally vulnerable to dispossession. This form of land tenure is found across the United States, but is particularly prevalent in southern African American communities, where educational inequities and distrust of law led to a reliance on extralegal practices of inheritance. This dissertation investigates the dispossession and preservation of heirs’ property in the Gullah-Geechee communities of Lowcountry South Carolina.

This investigation of heirs’ property is rooted in the interdisciplinary literature on common property. As a critical geographer and political ecologist, my approach to studying common property utilizes three distinct lenses: historical geography, legal geography, and Common Property Theory (CPT). Results rely on a mixed-method approach including: interviews, focus groups, participant observation, and archival research.

Results are presented in three interlocking empirical chapters. Chapter three triangulates interviews, focus groups, and archival data to construct a historical narrative of African American landownership in the Lowcountry. The chapter closes with a discussion of how historical narratives animate contemporary land conflicts. Chapter four triangulates interviews with a variety of archival data to analyze the process and outcomes of two legal cases. These case studies are followed by a discussion of how legal conflict exposes conflicting property regimes. Chapter five triangulates interviews, focus groups, and archival data to uncover social practices that are used to manage property. This chapter closes with a discussion of how extralegal property regimes converge and diverge from the legal property rights.

Together these interlocking chapters uncover clashing property regimes and values while paying careful attention to the uneven legal ground on which these conflicts occur. Further, results uncover the wide variety of ownership forms that emerge from conflicts over heirs' property. These findings reveal property as a diverse and highly contested concept and strengthen the currently faint bond between the literatures of heirs' property law and Gullah-Geechee culture.

KEYWORDS: Heirs' Property, Political Ecology, Gullah-Geechee,  
Enclosure, Commons, Legal Geography

Brian Grabbatin  
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January 27, 2016  
Date

“THE LAND IS OUR FAMILY AND THE WATER IS OUR BLOODLINE”:  
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## CHAPTER ONE: HEIRS' PROPERTY AND THE COMMONS

Author: Do you still live in Phillips, where you grew up?

Carver: Yeah. That's my home, that's where I stay.

Author: And what about—You said you inherited some land. Is that also in Phillips?

Carver: Yeah, that's in Phillips. A matter of fact I didn't inherit it, but it's heirs' property, you know, family property. It's like my grandmother left it. And see my mother she had about four or five brothers and sisters, so everybody's involved. That's what I call heirs' property. Do you know what heirs' property is? It's delicate thing (Interview, September 2006).

### Introduction

Carver lives in the Phillips Community, a predominantly African American community located near the city of Charleston that was founded by a group of freedmen in the 1870s. In the interview above Carver describes two parcels of land, which he owns through two different property regimes. His father purchased the first parcel in the mid-twentieth century. Later in life, Carver's father asked the county to survey the property and divide it into six lots, one for each of his sons. Before he died he made sure that each son received a deed from the county office.

The other parcel has become *heirs' property* because his maternal grandparents died without recording a will. To put it simply, heirs' property is ancestral land, which is passed down without a legally legible record of inheritance. Legal ownership of these parcels extends to all descendants, who hold undivided rights of ownership, use, and responsibility. Or as Carver put it “everybody's involved.”

The problem with heirs' property is that ownership rights extend along the limbs, branches, and twigs of family trees. Over generations the number of heirs can grow exponentially, increasing the potential for competing claims of ownership and legal conflict. While descendants of the deceased owner may live on and use the land, their property rights are ambiguous and fragile. Or as Carver put it, "It's a delicate thing."

The vulnerability of heirs' property is a problem across the United States, but is particularly prevalent in Native American, white Appalachian, and Southern African American communities (see Deaton 2012 for a national and regional overview). This dissertation focuses on African American heirs' property in Lowcountry South Carolina, a region characterized by intensive patterns of dispossession and passionate efforts of preservation.

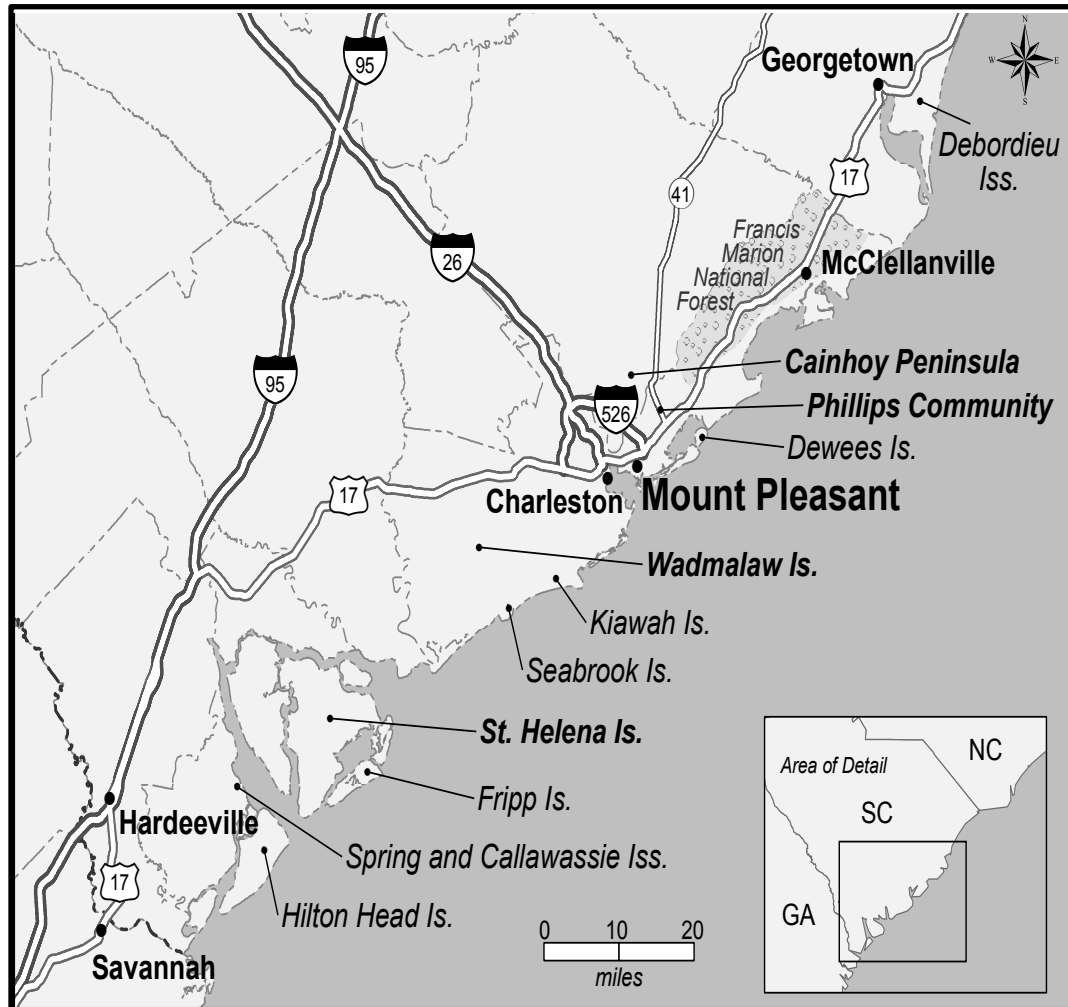
### **Background: Heirs' Property in the Lowcountry**

The Lowcountry consists of coastal counties of the Carolinas and Georgia whose ecological and cultural landscapes were shaped by eighteenth and nineteenth century rice plantation agriculture. Today they are dominated by historical and ecotourism, as well as intensive resort style residential development (see Figure 1.1).

The prevalence of heirs' property in this region is attributed to the unique history of African American landownership. During Reconstruction, the black majority in this region acquired land at a much higher rate than freedpeople in other parts of the South. Land was acquired through a variety of cash purchases and labor agreements with government agencies and southern landowners (Oubre 1978; Penningroth 2003). Though they faced competition from carpetbaggers and former plantation owners, the low-lying

**FIGURE 1.1: Lowcountry South Carolina**

This map includes communities, cities, and other features that are highlighted in this study of heirs' property (cartography by Jeffrey E. Levy).



soggy soils, risks of tropical disease, and struggling postbellum economy led to white flight and the proliferation of small African American-owned subsistence farms (Woofter 1930; Harris 2001).

In most cases, these original African American landowners documented their property with government agencies. The legal ambiguities of their ownership became more prevalent during the Jim Crow era when legal inequities, educational imbalance, and economic marginalization of African Americans fueled distrust of the state and a lack of familiarity with state practices. During this era African American communities relied on deeply rooted extralegal traditions of oral inheritance instead of creating and registering wills (Mitchell 2001). As a result, properties were passed down without a legally legible record of conveyance or inheritance and became vulnerable to dispossession.

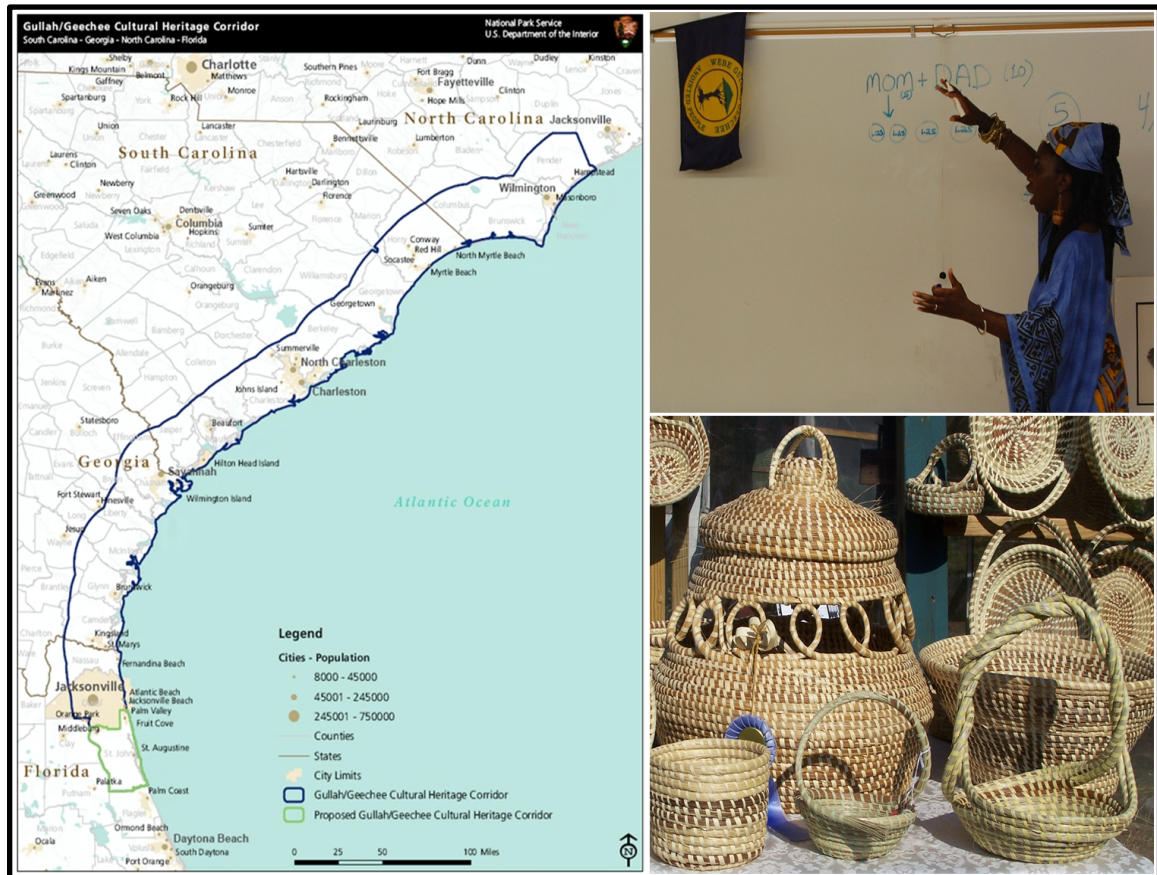
One of the most comprehensive studies of heirs' property in the American South was conducted by the Harlem based Black Economic Research Center (BERC) in the early 1970s. They found that out of the nearly twelve million acres of land acquired by African Americans from 1865 to 1910; only five and a half million acres remained by 1969 (Browne 1973). The BERC identified the legal vulnerability of heirs' property as a major factor in this land loss, prompting a period of intensive research to develop policy and outreach programs (see Pearce 1973; Graber 1978; McGee and Boone 1977; Manning-Thomas 1978; Sanders, Brooks, and Pennick 1980; Brooks 2008). These programs were particularly active in Lowcountry South Carolina (Penn Center 1971; Black Land Services Inc. 1972c, 1974).

Despite these concerted efforts, the American Bar Association's Property Preservation Task Force still refers to heirs' property as "the worst problem you never heard of" (Persky 2009: 1). This designation has highlighted and inspired a resurgence of scholarship and programs focused on heirs' property issues (e.g. Mitchell 2005; Rivers 2006a, Rivers and Stephens 2009; Mitchell, Malpezzi, and Green 2010; Mitchell 2014).

The prevalence and retention of heirs' property in the Lowcountry is also linked to a distinctive place-based cultural identity called Gullah-Geechee (see Figure 1.2). This cultural distinction refers to the African influenced speech patterns, craft traditions, gardening, and culinary practices retained by enslaved Africans on Lowcountry plantations and now practiced by their descendants as an act of social reproduction and heritage preservation (see Hargrove 2005a for an overview of the Gullah-Geechee literature). The literature on Gullah-Geechee culture and the growth of local activism based on this identity has led to national and international recognition for African American land loss. For example, when Queen Quet (South Carolina resident and Chieftess of the Gullah-Geechee nation) spoke before the *First International Conference on the Right to Self-Determination and the United Nations* in 2000; she highlighted the historical and contemporary importance of African American landownership in the Lowcountry (Goodwine 2001). And in 2006; when the National Parks Service established the *Gullah-Geechee Heritage Corridor*, they intended to not only memorialize and interpret African American history, but also to protect the future of African American families (National Park Service 2005).

## FIGURE 1.2: The Gullah-Geechee Coastline

The map on the left shows the National Park Service's Gullah-Geechee Heritage Corridor (National Park Service 2012). The photos on the right show Queen Quet leading a discussion about heirs' property at a focus group on St. Helena Island and sweetgrass baskets, a widely used symbol of the African influenced traditions of Gullah-Geechee culture (photos by the author).





Combatting the land loss associated with heirs' property has proved to be a contentious and complicated issue, but organizations like the Gullah-Geechee Sea Island Coalition and the Center for Heirs' Property Preservation (CHPP) have come up with creative and effective options for landowners (Rivers and Stephens 2009; White 2015; Behre 2012).

The extralegal patterns of inheritance producing heirs' property obscure it in county records, making it difficult to get an exact count of how much was lost or how much remains (Mitchell 2005). In an effort to better understand these patterns in South Carolina, the state legislature ordered a biennial review of "the plight of land loss by small landowners and holders of heirs' property" (South Carolina General Assembly [1976] 2014: Section 27-8-90). When I inquired about these reports, I was directed to a 2012 study by CHPP, which concluded that at least 41,000 acres of heirs' property still remain in South Carolina's six coastal counties (CHPP 2013a).

Each of those acres is a starting point for exploring the complicated nexus of heirs' property. This nexus involves historical and contemporary litigious, bureaucratic, and social practices performed by ancestors, descendants, community leaders, NGOs, lawyers, judges, land speculators, and legislators, among others. The next section describes how three distinct lenses are used to identify and investigate three distinct strands of this nexus.

### **Investigating the Commons**

This investigation of heirs' property is rooted in the interdisciplinary literature on the commons. This literature was initially developed as a critical response to Garrett Hardin's

1968 “Tragedy of the Commons” thesis, which disparaged commons as inefficient and destined for ruin. Today, nearly half a century of research has documented the complexity of common property regimes as well as the adaptive capacities of commons users in the context of intensified state-market practices that facilitate privatization (see McCay and Acheson 1987; National Research Council 1986; Berkes et al. 1989; Feeny et al. 1990; Burger and Gochfeld 1998; and McCarthy 2009 for overviews of this work). My approach to studying the commons of heirs’ property utilizes three distinct geographical lenses: historical geography, legal geography, and the political ecology of Common Property Theory (CPT).

*First*, this dissertation uses the lens of historical geography literature to investigate how contemporary struggles over heirs’ property are an extension and intensification of longer temporal processes of enclosure (Cosgrove [1984] 1998; Cronon 1991; Kosek 2006; Newfont 2012; Correia 2013). This approach has the power to illustrate both the material and symbolic role of the past in framing and animating contemporary struggles over land and the landscape (Moore 1998; Kosek 2004; Schein 2009; Newfont 2012; Himley 2014). In the case of African Americans in the Lowcountry, the values, practices, and conflicts associated with heirs’ property are rooted in the remembrances and material legacies of enslavement, emancipation, and segregation.

*Second*, this dissertation utilizes a legal geography approach by investigating the procedures and outcomes of litigious conflicts over heirs’ property. Analyzing legal conflicts reveals competing discourses of ownership and use rights, as well as which discourses are legitimated and which forms are erased by litigation (Blomley 1994;

Sparke 1998; Wolford 2007; Blomley 2008a, Newfont 2012). Further, the specific litigious practices involved in this process reveal how law transforms the spatial and social relations of property (Blomley 2005; Graham 2011; Blomley 2015). In the case of heirs' property, family conflicts and legal practices of the state-county are essential for understanding patterns of land dispossession and retention.

*Third*, this dissertation develops a political ecology approach to Common Property Theory (CPT) in order to understand the dynamics and adaptive capacity of heirs' property. The CPT approach requires a systematic investigation of the socially embedded practices that commons users rely on to determine owners and the rights or responsibilities among them (McCay and Acheson 1987a, Berkes et al. 1989; Ostrom 1990; Bromley 1991). In order to understand the resilience of common property regimes in the context of advanced capitalism, this study pays particular attention to the power dynamics within communities (Mackenzie 1998; Wolford 2006) as well as the ability of commons users to combat or adapt to forces of privatization and dispossession (St. Martin 2001; McCarthy 2002; Emery and Pierce 2005; Ruiz-Ballesteros and Gual 2012). In the case of heirs' property, this involves using socially-embedded practices to resolve family conflict without litigation.

In sum, this framework focuses on three strands of the heirs' property nexus:

- 1) Historical Change and Historical Narratives
- 2) Litigious and Bureaucratic Practices
- 3) Social Practices

Each of these strands is the focus of an empirical chapter, each of which is guided by a pair of research questions. The subsections below introduce these research questions. To

further explain these research questions, I rely on excerpts from interviews with “Carver,”<sup>1</sup> who I first met in 2006 while researching the Gullah-Geechee tradition of sweetgrass basket making and was able to interview again in 2012 for this project.<sup>2</sup>

### **RQs 1.1 and 1.2: Historical Change and Historical Narratives**

**RQ 1.1** How have past events and changing social formations produced heirs’ property?

**RQ 1.2** How do contemporary landowners mobilize the past in their land retention efforts?

Research questions 1.1 and 1.2 use the lens of historical geography to focus on the historical dimensions of African American landownership in the South Carolina Lowcountry. Specifically, they draw attention to the historical production of heirs’ property and the important role of historical narratives in contemporary conflicts over these parcels.

During the eighteenth century, the South Carolina Lowcountry was dominated by plantations where the enslaved ancestors of heirs’ property owners produced and maintained lucrative agricultural landscapes, which made South Carolina the richest American colony, at least for a time (Wood 1975; Edgar 1998; Bass and Poole 2009). Of

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<sup>1</sup> “Carver” is a pseudonym used to protect this landowner from the vulnerabilities associated with land speculation and family conflict. Each landowner was assigned a unique pseudonym and is identified only by the community in which they live.

<sup>2</sup> Sweetgrass baskets are a craft of West African origin, which was practiced by enslaved Africans in the eighteenth and nineteenth centuries to produce baskets for winnowing rice on Lowcountry plantations. Today, African American families who have passed on this tradition have found a niche in Charleston’s tourism economy, marketing and selling baskets as a historical artifact and symbol of Gullah-Geechee culture (Rosengarten 1986; 2008; 2013). My master’s thesis research focused on how development was impacting the natural resources and roadside sale locations used by these artisans (Grabbatin, Hurley, and Halfacre 2011).

course, enslaved Africans never received a share of this wealth, but they did establish property rights over homes and gardens through social practices that were recognized within plantation society (Morgan 1983; Penningroth 2003). These understandings of property animated the contentious struggles over land during Reconstruction, where freedpeople used cash and labor agreements with former plantation owners and government agencies to legally legitimize land tenure (Berlin, Miller, and Rowland 1988; Penningroth 2003). After Reconstruction, however, African American families began to rely once again on social practices, building extralegal property regimes.

For example, the Phillips Community, where Carver lives, was founded in 1870 by a group of freedmen who purchased ten-acre parcels of land from a former plantation owner. These founders recorded deeds with the county that reflected legally legible individual ownership of these parcels. Later Phillips' families began to rely on extralegal social practices, creating heirs' property (National Park Service 2005). I asked Carver about this historical pattern.

Author: Why did people leave heirs' property?

Carver: I think that was the great—as far as I'm concerned—a great plan. Because during that time—say when my father and people his equals came up, even when I was a boy—money wasn't around. You stand and work for twelve hours a day and all kind of thing. We used to do a lot of farming. Those people held on to their property for their kids.

In these times now, you might have a few that don't care about things like that. But somebody in the family would say, "Well, right, my daddy kept this plot for us, I will see that out"... I'm saying that's the reason I believe they have it like that, so we can hold on to it (Interview, May 2012).

For Carver's ancestors, their economic marginalization and their reliance on subsistence livelihoods gave landownership a central importance in the reproduction of family and community. Many of the heirs' property owners I interviewed described heirs' property

as a strategy that developed due to historical circumstance. By using socially embedded forms of inheritance, they were able to protect land from the legal and bureaucratic injustices of Jim Crow, and pass land to the next generation collectively, a strategy that helped them retain land through turbulent times.

Further, while contemporary landowners have divergent views about the best uses and value of their land, advocates for retention often base their arguments on heritage and historically embedded obligations. As Carver points out, his commitment to “seeing out” the wishes of his ancestors is rooted in his understanding of who his ancestors left the land for and why they left it.

## **RQs 2.1 and 2.2: Legal and Bureaucratic Practices**

**RQ 2.1** How do litigious and bureaucratic practices affect heirs’ property?

**RQ 2.2** How do heirs’ property owners utilize and respond to these practices?

Research questions 2.1 and 2.2 use the lens of legal geography to address the complicated litigious and bureaucratic processes that can erase heirs’ property. RQ 2.1 focuses on how litigious and bureaucratic practices transform property relations among heirs. RQ 2.2 focuses on the role and reaction of heirs’ property owners to these processes. Discussing these questions requires legal terminology. To aid the reader, the first appearance each term is italicized and followed by an in-text definition. While these in-text explanations should be helpful, a glossary is included in the appendices for later reference (see Appendix A).

For starters, heirs’ property is *real property* (in this case land) whose titleholder has died *intestate* (without a probated will). When a landowner dies in South Carolina,

families have ten years to *probate* their will. Probating involves presenting the original will and death certificate to a *Clerk of Court* in the county where the deceased family member resided. Without a probated will, the wishes of the deceased cannot be recorded in a legally legible way and therefore any claims of inheritance must comply with the state's laws of intestate succession (CHPP 2013a, 2013c).

Intestate properties have a *clouded title* because the deed is still in the name of a deceased owner and the parcel cannot be conveyed to a new owner. The state does not automatically initiate actions to resolve clouded titles, unless the property falls into tax delinquency. Otherwise, an heir must initiate legal action before the state gets involved. The first step for an heir to clear a clouded title is to file a *petition to determine heirs*, where the litigants must identify and attempt to contact any descendants related to the titleholder through legally legible marriages, births, or adoptions (CHPP 2007).

Even once the heirs are determined, the title remains clouded because intestate succession gives all heirs rights of *tenancy in common*. Tenants in common share equal and undivided ownership and use rights. Whether they live on the property or not, all heirs have rights to any income derived from the land and any buildings constructed on the land. They also share the burden of paying the property taxes (South Carolina General Assembly [1976] 2014; 62.2 Part 1).

Once all of the tenants in common are identified, any single heir can file a *quiet title action* to clear the cloud from their title. Quieting title involves identifying the percentage of interest held by each tenant in common. It can result in two types of *clear title*: a single deed listing the name of all heirs (formalizing co-ownership as tenants in common) or several deeds for subdivided parcels (*partition in kind*). However, quieting

title can also lead to conflicts among heirs, exposing the vulnerability of tenancy in common ownership rights (Rivers 2006b, Deaton, Baxter, and Bratt 2009).

Author: You said that heirs' property is "kinda delicate," right?

Carver: Yeah, cause like I said sometimes you have some brothers that—we call them "kinda trifling"...Next thing you find out, you off the property, you know, somebody else own your property. So, it's kinda rough (Interview, May 2012).

What makes heirs' property "kinda delicate" is that once a title is quieted, any single tenant in common can request to have their interest separated from the other co-owners. As Carver points out, this can lead to conflicts between heirs who want to sell and those who want to retain the property. These cases are decided by a *Master-in-Equity* (a civil court judge) who must determine a way to equitably divide their interests. In cases where property has passed intestate for multiple generations or where interests are equal to acreages that are not permitted by county zoning ordinances, judges may not order a partition in kind. Instead, they may order a *partition sale*, where the property is sold at auction with the proceeds divided among the heirs. Legal scholars have argued that these orders lead to sales below market value and proceeds that fail to provide the capital needed to acquire new housing or create a sustainable income (Rivers 2007; Mitchell, Malpezzi, and Green 2010). Whatever the outcome, these litigious and bureaucratic processes are essential to understanding both the dispossession and preservation of heirs' property.



### **RQs 3.1 and 3.2: Social Practices**

**RQ 3.1** What social practices do landowners use to determine landownership?

**RQ 3.2** How do those social practices serve as a cultural mechanism for bolstering land retention?

In contrast with the *de jure* (legal) property regime addressed above, RQs 3.1 and 3.2 address the *de facto* (extralegal) property regime used to determine ownership and use rights on parcels with clouded titles. In the opening quote, Carver used the terms “heirs’ property” and “family property” interchangeably, which was common during my fieldwork. In this study, I use the term *heirs’ property* to refer to *de jure* property rights of tenants in common and the term *family property* to describe the *de facto* property rights established through extralegal social practices.

The persistence of family property, despite the legal vulnerabilities and ambiguities described above, is understudied in both the legal and cultural literature on the Lowcountry. Legal scholars have focused on developing policies that will strengthen or expand *de jure* rights for heirs’ property owners (Mitchell 2014), while legal outreach organizations attempt to correct owners’ misconceptions about their legal rights to stop the proliferation of intestate succession (CHPP 2011b). On the other hand, the Gullah-Geechee literature has raised concerns about how land loss affects cultural traditions, but is surprisingly quiet on issues of inheritance and landownership (see Demerson 1991; Twining and Baird 1991a, for exceptions). Studies that bring together detailed scholarship on *de jure* and *de facto* property regimes are few and far between (see Dyer 2007; Dyer and Bailey 2008), a gap that RQ 3.1 and 3.2 are designed to address. Again, Carver offers some insights about the importance of social practices and their relationship to litigious dispossession.

I had some real estate wrote me letters wanting to know if I wanna sell my property, but I ain't rebuilding. I'm not interested in selling cause I'm up in age now. I need a place to live and I ain't planning on going in no old folks home unless I get sick and they put me there. But I got my own home and everything so that's where I'm gonna be. And then when the Lord take me over to see him and some of the children need a place to stay, my grands and them, they can have it. It'll be like how my grandmother left the property for everybody. It'll be for anybody that needs a place to stay (Interview: Carver, September 2006).

When I interviewed Carver in 2006; he told me he wanted to leave his paternal property “for everybody,” like his grandmother did. However, by 2012; his fears of legal dispossession and the pressures of rising property taxes had inspired him to pursue a middle way. Like his father before him, he and his wife have written wills, but they have not subdivided the land. Instead their wills leave the land to their children collectively, but identify a single child as executor to help mitigate family conflict.

The heirs' property on his maternal side is still clouded. While this situation has fueled frustration and comfort in roughly equal amounts, Carver feels that the process of clearing title is too complicated and expensive for any of the heirs to undertake. Though Carver does not live on the clouded parcel, and never plans to, he still contributes money to the property taxes each fall and communicates with family members to make sure they share a common vision for the land. When I asked him about the purpose of the property he told me it was for the entire family because “they got their rights, even if they don't help pay the tax...that's what heirs' properties do, you know. All of the family is included” (Interview: Carver May 2012).

As mentioned above, each pair of research questions uses a distinct geographic lens to address a strand of the heirs' property nexus, covered in one of three interlocking empirical chapters (chapters three, four, and five). This framework for studying heirs'

property is directly inspired by the political ecology literature, particularly the scholarship on commons and enclosures. The next section reviews this literature, highlighting some key concepts and themes that will be developed more thoroughly in each empirical chapter.

### **Common Property: A Political Ecology Approach**

I rely on a political ecology framework to bring together these three strands of the heirs' property nexus (historical production and narratives, litigious and bureaucratic practices, and social practices). Given the ever widening diversity of theoretical, methodological, and scalar approaches assembled under the moniker of "political ecology" (Rocheleau, Thomas-Slayter, and Wangari 1996; e.g. Watts and Peet [1996] 2004; Zimmerer and Bassett 2003; Paulson and Gezon 2005; Biersack and Greenberg 2006; Heynen, Kaika, and Swyngedouw 2006; Goldman, Nadasdy, and Turner 2011; Peet, Robbins, and Watts 2011) this section identifies the core concepts from this "critical toolbox" that will aid in this study of how landowners define, negotiate, and struggle over heirs property (Robbins [2004] 2012: 72).

My focus on property was inspired by the work of legal geographer Nick Blomley, whose 2005 review article *Remember Property?* was directed at academics, judges, policy makers, activists, and citizens who, in his estimation, took property for granted. While not a political ecologist per se, his work on urban gardening (2007b), the maintenance of hedges (2007a), river meanders (2008b), and wildlife territory (Ojalammii and Blomley 2015) are part of the critical geography scholarship on nature and society. Blomley is particularly helpful for this study of heirs' property because he draws direct

attention to how legal practices reinforce dominant property regimes (e.g. Blomley 2003; 2010; 2014), while also investigating the diverse social practices that can “unsettle” these regimes (e.g. Blomley 2004, Blomley 2007b). This dialectic links two of political ecology’s core concepts: enclosures and commons.

### *Enclosures*

The meaning of property is not constant. The actual institution and the way people see it, and hence the meaning they give to the word, all change over time. The changes are related to changes in the purposes which the dominant classes in society expect the institution of property to serve (MacPherson 1978: 1).

Blomley’s research draws on the work of political economist C.B. Macpherson, whose work sought to correct two primary misconceptions about property. *First*, property is not a thing, but expressed through practice. And *second*, that even in the Global North, property is much more than just private ownership (Blomley 2005). As the quote above illustrates, MacPherson emphasized a historical materialist approach focused on studying property within changing social formations (MacPherson 1975; Cosgrove [1984] 1998; Smith 1984; Griffin 2010; O’Donnell 2014). The emergence of political ecology is often attributed to similar scholarship, namely research in natural hazards, cultural ecology, and peasant studies that studied how environmental governance and capitalist expansion were affecting commonly owned resources and commons users around the world (Wolf 1972; Nietschmann 1979; McCay and Acheson 1987c, Blaikie and Brookfield 1987).

One of political ecology’s consistent themes has been to challenge Garrett Hardin’s *tragedy of the commons* thesis. Hardin’s work disparaged communal property as inefficient and ecologically destructive, while advocating for markets and governments as

the optimal mechanism for allocating resources in efficient, productive, and environmentally conscientious ways (1968; 1978). His argument was not unique. It reflected the persistence and power of neo-Malthusian logic used by environmental economists of his time (Gordon 1954; Scott 1955; Lloyd 1968). But in the conservative political climate of the eighties and nineties, his tragedy thesis became a mainstay of the neoliberal logic responsible for developing new and intensified forms of enclosure based on the state's role in reinforcing and facilitating privatization (Blaikie and Brookfield 1987; McCarthy and Prudham 2004; Mansfield 2008).

The diverse work on Common Property Theory (CPT) discovered that these tragedies were not caused by internal failures, but were the result of external pressures of environmental governance and the expansion of capitalism (Nietschmann 1979; Blaikie and Brookfield 1987; McCay and Acheson 1987a, McCay and Jentoft 1998). This work exposed what commons scholars McCay and Acheson called the *tragedy of incursion*: how intertwined practices of states and markets facilitate enclosure, displacing common property regimes, render them ineffective, and marginalize the people who rely on them (McCay and Acheson 1987a, 29).

Historical geography scholarship has drawn on this research to investigate global practices of enclosure (see articles in the following special issues Offen 2004; Davis 2009; Chazkel and Serlin 2010; 2011). In particular, this dissertation focuses on the importance of property law and associated state practices of mapping, surveying, and titling that reinforce de jure property rights (Scott 1998; Braun 2000; Blomley 2003; Correia 2013; Li 2014). These property relations were ultimately made through social practices like fencing, hedging, physical violence, and social exclusion (Blomley 2007a,

Blomley 2003; Correia 2009). However, litigious and bureaucratic practices give power to particular people and particular practices. When individuals appeal to the state for rulings over property disputes, law stabilizes some boundaries and legitimates some claims, establishing dominant property regimes. When de facto claims enter the courts, oral histories and ownership traditions can be erased. If they can be translated into maps and deeds this translation may serve to create absolute and therefore commodifiable spaces out of previously ambiguously defined property (Mackenzie 1989; Scott 1998; Sparke 1998; Graham 2011; Li 2014).

Contemporary political ecology scholarship on neoliberal natures is the logical extension of this work on historical enclosures. It draws attention to how intertwined state-market practices in the present expose new types of resources, and re-expose resources like land, to new forms of commodification and governance (McCarthy and Prudham 2004; Heynen et al. 2007; Mansfield 2008; Li 2014). This approach was applied to gentrification and landscape change in the Global North, topics that are essential to understanding the issues that heirs' property owners face.

The forms of enclosure in the Lowcountry are connected to regional patterns of exurban migration, paired with the decline of resources extraction industries, which has prompted many rural areas to reinvent their economies by attracting tourists and residents for the aesthetic and recreational consumption of natural amenities (Tibbetts 2004; Hurley et al. 2008; Halfacre 2012; Hurley et al. 2013). The changing notions of property rights that accompany these transitions often cause conflicts between native residents and newcomers over land use and access to resources (Hurley and Halfacre 2009; Grabbatin 2012a, Newfont 2012; Hurley et al. 2013).

Enclosures, both old and new, are essential to understanding how private property has established a dominant place in our world. However, the literature on the commons illustrates that property is far more complicated in practice, with varying degrees of enclosure, overlapping property claims, and local modalities that can interrupt and unsettle the dominant property regime.

### *Commons*

As mentioned earlier, intellectual historiographies of political ecology focus on the importance of scholarship that challenged Hardin's tragedy of the commons thesis (Neumann 2005; Robbins [2004] 2012). As described above, this work directly focused on the importance of enclosure, but the development of Common Property Theory (CPT) created a parallel and no less critical response to Hardin's thesis. CPT scholars criticized Hardin for perpetuating and popularizing the misunderstanding that common property is synonymous with open-access regimes (McCay and Acheson 1987a, Bromley 1991).

Drawing on E.P. Thompson's concept of the moral economy (Thompson 1971), CPT scholars illustrated that commons are based on rights of access and use determined through processes of social negotiation within communities (see National Research Council 1986 for a review of early studies). Through their *Workshop in Political Theory and Policy Analysis*, Vincent and Eleanor Ostrom played a crucial role in legitimizing this scholarship, bringing together case studies from around the world to meticulously document complex rules and decision making structures associated with these regimes (Ostrom 1988; 1990; Ostrom et al. 1999). Today, nearly half a century of research on the commons has reviewed, revised, and expanded common property theory (see National

Research Council 1986; Feeny et al. 1990; Burger and Gochfeld 1998; Ostrom et al. 1999; Ostrom et al. 2002; McCarthy 2009 for reviews of this work). Hardin addressed these critiques by restating his thesis as “the tragedy of the unmanaged commons” (1988), but he continued to promote two polarizing options to avoid tragedy (centralized regulation and widespread privatization), ignoring the potential of communities to manage their resources through de facto property regimes (Hardin 1978; 1988).

Contemporary political ecologists have drawn on CPT and also used the concept of cultural landscape to explore the material and symbolic importance of commons users’ resistance to enclosure (Moore 1996; Kosek 2006; Neumann 2011). As illustrated above, the scholarship on enclosures illustrates how seeing the world through neoliberal eyes has displaced other ways of seeing and practicing property (Smith 1984; Graham 2011; Scott 1998; Li 2014). However, political ecologists have drawn attention to how acts in defense of the commons are not only struggles over natural resources (Harvey 2011; 103), but are also struggles over historical narratives and culturally embedded values that are important for social reproduction (Kosek 2004; Wolford 2010; Newfont 2012).

This work has focused on what Jake Kosek calls the “cultural politics of memory,” which shows how historical narratives are used to legitimate alternative claims of ownership and use rights (Kosek 2004). These narratives draw connections between past acts of dispossession, racism, legal theft and forms of inequality and marginalization in contemporary conflicts. In these struggles over property, the legacies of the past are mobilized as reasons and justifications for protecting existing property rights or establishing new ones (Kosek 2004; Newfont 2012; Himley 2014). These shared histories produce de facto ownership regimes that may clash with de jure regimes. In these cases,



social movements draw on shared values and traditional social practices for establishing use and ownership rights, juxtaposing these regimes with property law in hopes of resisting or changing litigious and bureaucratic enclosures (Mackenzie 1989; Graham 2011; Newfont 2012).

Further, this scholarship has shown that these conflicts over the commons hinge on different ways of determining the value of land and landscape. Particularly in the Global South and in resource dependent communities in the Global North, the defense of the commons is connected to its material significance for livelihoods and its symbolic importance for social reproduction (McCarthy 2002; Emery and Pierce 2005; St. Martin 2006; Penningroth 2007; Woford 2010; Grabbatin, Hurley, and Halfacre 2011; Newfont 2012). Finally, while resistance to enclosure exposes shared histories, practices, and values of property, it also exposes conflicts among community members who are expected to share a common vision for the character and pathways for social reproduction (Woford 2004; 2006). These conflicts expose power dynamics within communities, which ultimately affect whose vision of landscapes are reproduced (Walker and Fortmann 2003; Duncan and Duncan 2004; Hurley and Walker 2004).

### *The Political Ecology of Property in the Global North*

Now that the debate over the validity of using political ecology's tools in the Global North has ended...it is fair to ask: where geographically and thematically, has the field's examination of North American cases led us? (Hurley and Carr 2010: 100).

This dissertation focuses on four African American communities in the South Carolina Lowcountry and this regional context is crucially important for understanding its place in the political ecology literature. This dissertation is a "First World political ecology," a

reference to the geographical expansion of the literature that emerged in the early 2000s. In 2002; political ecologist James McCarthy expressed his dismay that, “Some have defined political ecology as an approach specific to the Third World” (2002: 1284). He was directly referencing Raymond Bryant’s promotion of political ecology in the Global South (Bryant 1992; Bryant and Bailey 1997; Bryant 1998) and the dearth of case studies focused in the Global North at that time (see Black 1990; Seager 1996; Miller, Hallstein, and Quass 1996; McCarthy and Guthman 1998; Swyngedouw 1999 for exceptions). In the early to mid-2000s, subsequent commentaries (Robbins 2002; Walker 2003; Castree 2007) and special issues in top-tier journals kick-started political ecology research at field sites across the United States (McCarthy 2005; Schroeder 2005; Schroeder, Martin, and Albert 2006).

Flash forward to 2015 and four of the last eight winners of the Association of American Geographers Cultural and Political Ecology awards and four of the last six keynote speakers at the Dimensions of Political Ecology conference have featured scholars conducting fieldwork in the Global North (CAPE 2015; PEWG 2015). However, the political ecology they practice is not limited by First/Third or North/South dichotomies. Today’s political ecology is global and multi-scalar (Peet, Robbins, and Watts 2011) and some of the most highly praised work on the Global North uncovers global processes without obscuring the regionally distinct context of strong state governance and advanced capitalism (see Robbins 2002; Castree 2005 for a discussion of the “symmetry of practice” in political ecology).

In the Global North, property is an often overlooked subject because we live in a world where we assume that everything is claimed (Blomley 2005). In our world, states

claim ultimate ownership of all lands and natural resources within their boundaries (Scott 1998; Richards 2002). Privatization shapes “our relationships not only to the resources necessary for life, but to life itself and even ourselves” (Mansfield 2008: 2). But as this dissertation illustrates, even where deeds, plats and Global Positioning Systems (GPS) demarcate seemingly definite and permanent boundaries, even an archetypal resource like land remains complicated and diverse. New forms of common ownership and bundles of rights continue to redefine landownership, while transient natural boundaries prompt revisions of our seemingly settled property regimes (Blomley 2008b, Harvey 2011; McGlashan and Duck 2011). In sum, private ownership occupies a dominant place in our world. However, the persistence of heirs’ property in the South Carolina Lowcountry illustrates that, even in the Global North, the enclosure movement is incomplete and property in practice exhibits varying forms, degrees, and layers of ownership.

### **Overview of the Dissertation**

The property connection in complex societies is not merely an outcome of local or regional ecological processes, but a battleground of contending forces which utilize jural [*sic*] patterns to maintain or restructure the economic, social and political relations...The local rules of ownership and inheritance are thus not simply norms for the allocation of rights and obligations among a given population, but mechanisms which mediate between the pressures emanating from the larger society and the exigencies of the local ecosystem (Wolf 1972: 201-202).

This quote from Eric Wolf (who is credited with coining the term “political ecology”) reemphasizes what I have tried to illustrate above. Uncovering the nexus of heirs’ property requires an exploration of the “battleground of contending forces” that facilitate the enclosure of heirs’ property, and the “mechanisms mediating these pressures” that contribute to the persistence of this kinship-based commons.

*Chapter two* describes the methodology used to collect and analyze data for this study. The chapter begins with a description of four study sites. Then, introduces a mixed-methods approach including: interviews, focus groups, participant observation and archival research. The chapter ends with an explanation of how this data was triangulated in each of the three empirical chapters that follow.

*Chapter three* presents a historical political ecology of heirs' property. The goal of this chapter is twofold. First, it describes the historical production of African American landownership within the Lowcountry's changing social formations (RQ 1.1). Second, it illustrates how historical narratives are mobilized in contemporary social movements (RQ 1.2). Results rely primarily on in-depth interviews with landowners as well as primary and secondary archival sources. This chapter sets the stage and raises the stakes for the analysis of litigious, bureaucratic, and social practices in the next two chapters.

*Chapter four* describes the litigious and bureaucratic practices that transform and erase heirs' property. The goal of the chapter is also twofold. First, it describes how the litigious practices of clearing title lead to the disruption and erasure of tenancy in common (RQ 2.1). Second, it illustrates how resistance and adaptation to litigation uncovers conflicts between de jure and de facto forms of property (RQ 2.2). Results rely primarily on archival analysis of two legal case studies. The discussion relies on a broader range of examples from qualitative and archival sources. This chapter illustrates how litigation lends power to particular values and practices of property, while delegitimizing and erasing others.

*Chapter five* describes the persistence of de facto kinship-based practices associated with family property. The goal of the chapter is also twofold. First, it explores

the complicated and diverse extralegal social practices that heirs rely on in lieu of well-defined legal rights (RQ 3.1). Second, this chapter analyzes the relationships between de jure and de facto property regimes (RQ 3.2). Results rely primarily on five landowner case studies based on in-depth interviews and archival research. The discussion illustrates how family property serves as a mechanism of resistance to privatization, yet also derives power from its overlap with aspects of de jure regimes. This chapter further illustrates the importance of historical narratives and processes of enclosure, but uncovers the details of de facto practices, which were largely hidden in the other chapters.

*Chapter six* revisits the primary conclusions of each empirical chapter and their contribution to the academic literature. It also identifies some of the current trends affecting the dispossession of heirs' property and new approaches used by activists and NGOs. This chapter closes with some reflections on the potential practical impacts of this study and how results will be disseminated.

## CHAPTER TWO: RESEARCH METHODOLOGY

### Introduction

As described in the introductory chapter, this dissertation relies on six research questions, which address three strands of the heirs' property nexus: historical change and historical narratives, litigious and bureaucratic conflicts, and social practices. To answer these questions I relied on a mixed-methods approach (Creswell 2009) which comprised: thirty-four semi-structured interviews, two focus groups, participant observation in formal and informal settings, as well as primary and secondary archival data. Each type of data provides a different line of sight for understanding the nexus of heirs' property. My analysis triangulates these lines of sight, producing detailed case studies of locations, processes, and people to reveal complexities that are otherwise hidden when using a single methodology (Berg and Lune 2011).

In this chapter, I explain the design and implementation of this approach. *First*, I introduce the four sites where I conducted fieldwork. *Second*, I present a timeline of my data collection, analysis, and write-up to show the chronological development of this project. *Third*, I describe the rationale and outcome of each data collection method in the following order: interviews and focus groups, participant observation, and archival research. *Fourth*, I describe how the data was analyzed and how it is presented in the three empirical chapters that follow.

### **Study Sites: The South Carolina Lowcountry**

Heirs' property is found across the United States, but is particularly prevalent in Appalachia, the Deep South, and the Lowcountry. The prevalence of heirs' property in these sub-regions is attributed to histories of economic and political marginalization, as well as cultural isolation.<sup>3</sup> However, the importance of retention and pressures of dispossession vary significantly from place to place. This study focuses on four African American communities, who share a common historical trajectory (see Figure 2.1).

As mentioned in chapter one, the prevalence of heirs' property in Lowcountry South Carolina is tied to African American land acquisition and retention strategies during Reconstruction and the general wariness of bureaucratic and litigious processes during Jim Crow (Mitchell 2001). While Lowcountry communities were not immune to the patterns of black land loss during the first half of the twentieth century, the retention of heirs' property provides an anchor for the rural family community (Falk 2004; Dyer and Bailey 2008). However, the legal scholarship has identified the Lowcountry as a region with unique pressures and vulnerabilities that lead to dispossession (Rivers and Stephens 2009; Grabbatin and Stephens 2011).

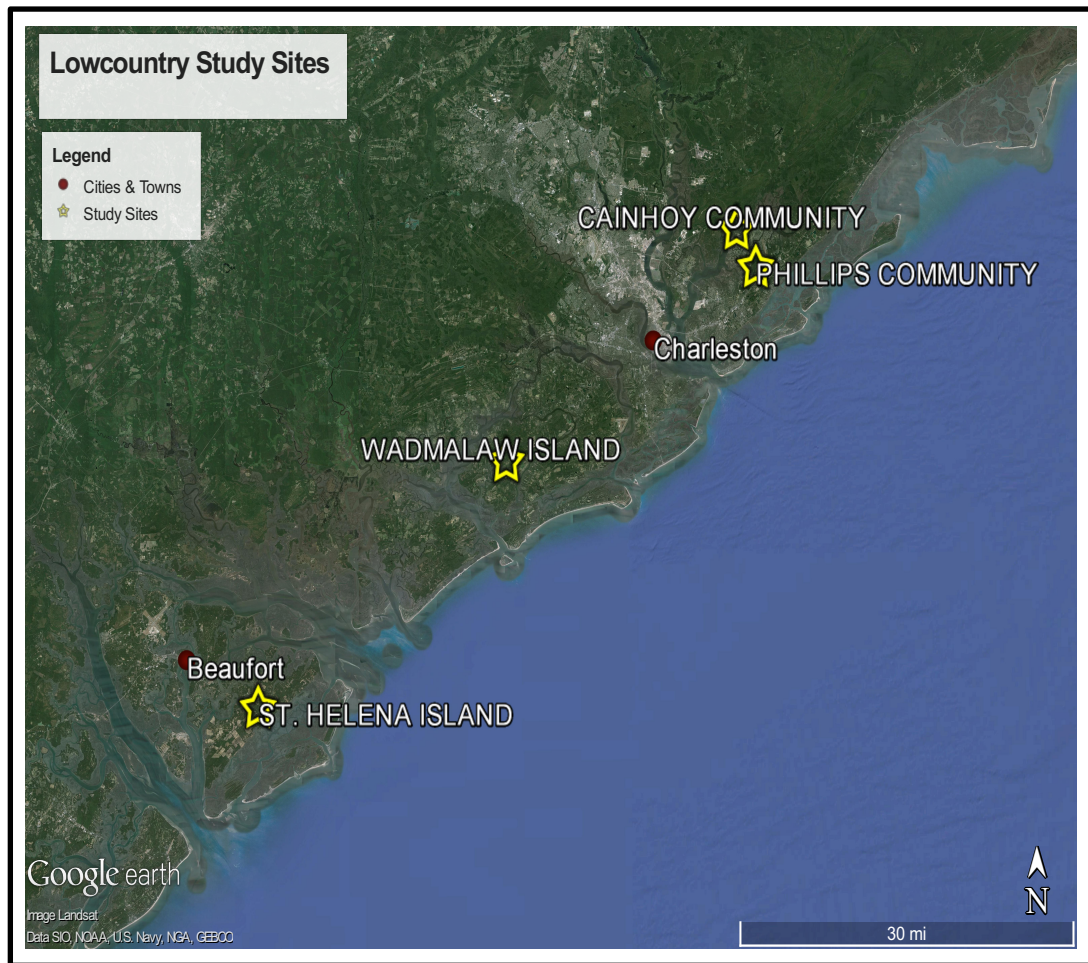
The vulnerability of heirs' property in the Lowcountry is a product of coastal development patterns that have transformed the regional landscape over the latter half of the twentieth century (Cowdrey [1983] 1996; Halfacre 2012). Queen Quet refers to this process as "destructionment" because of the negative impact this growth has had on the

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<sup>3</sup> See (Deaton 2005; 2007; Deaton, Baxter, and Bratt 2009) for recent work in Appalachia. See (see Auburn University Office Of Agricultural Communications & Marketing 2012; Dyer 2007; Dyer and Bailey 2008 for recent work in the Deep South)for recent work in the Deep South.

### FIGURE 2.1: Lowcountry Study Sites

This map shows the location of my four study sites in relation to the cities of Beaufort and Charleston. Detailed maps of each study site showing settlement patterns and surrounding land use are included later in this chapter (map created by author using Google Earth).





natural environment and African American communities (Goodwine 1998a). The growth of the Lowcountry is fueled primarily by the migration of people from the Northeast and Midwest to coastal cities and towns, who have promoted the consumptive value of ecological and historical landscapes (Tibbetts 2004; 2007; Johnson and Zipperer 2007). While suburbanization in the 1970s and 1980s slowly transformed farmland into housing and commercial buildings, growth rapidly expanded and accelerated after Hurricane Hugo in 1989. The construction of bridges, roads, and utility that followed has literally paved the way for development in historic African American neighborhoods (Hurley et al. 2008; Halfacre 2012).

As a result, many coastal towns and barrier islands in South Carolina have turned into “the exclusive domain of out-of-towners, second-home owners, and the well-to-do” (Tibbetts 2004: 1). The prevalence of gated subdivisions with panoramic views of waterways, golf courses, and private docks reflect the affluence of new residents. African American communities, on the other hand, though better paid than their ancestors, typically work low-wage and seasonal service sector jobs that seldom provide an opportunity to keep up with the rising cost of living (Manning-Thomas 1978; 1980a, Hargrove 2005b, Odinga 2006). Many historic African American communities are now surrounded by resort style development, raising property taxes and accentuating the vulnerability of heirs’ property by providing an incentive for heirs to clear title and file partition actions (Glanton 2006; Rivers 2007; Slade 2013).

For this study I have identified four African American communities in the South Carolina Lowcountry where these growth related vulnerabilities are apparent. Two of these communities, Phillips Community and the Cainhoy Peninsula, are in East Cooper, a

colloquial term used to reference the area of Charleston County that lies east of the Cooper River from the city of Charleston. The other two study sites, Wadmalaw and Saint Helena, are “Sea Islands,” a term used to refer to the twenty-six barrier islands along the South Carolina coast.

### *Cainhoy Peninsula*

The Cainhoy Peninsula is located along the Wando River in Berkeley County, South Carolina (see Figure 2.2). In 1740 its rich clay deposits made it the focus of a vibrant river economy centered on brickmaking. After the Civil War freedmen worked as sharecroppers for their former owners, in some cases signed contracts that were facilitated by the United States Bureau of Refugees, Freedmen, and Abandoned Lands (Freedmen’s Bureau). By the 1930s, African American families in Cainhoy largely lived on their own land. They sustained themselves by cultivating their own crops, picking for the American Fruit Growers, and working on Harry Guggenheim’s cattle ranch (Frazier 2011).

While resort style development disrupted African American landownership on the sea islands of South Carolina, the Cainhoy Peninsula remained a rural, mostly African American area with seemingly little value for tourism development. In the late 1980s, however, road and utility construction throughout East Cooper literally paved the way for residential and commercial development. Rising property values and taxes precipitated a decline in African American landownership.

### FIGURE 2.2: Cainhoy Peninsula Map

This image shows the location of the Cainhoy Peninsula. The peninsula is bounded by the Cooper River to the east, Thomas and Daniel Islands to the south, a tributary of the Wando River to the west, and the town of Cainhoy to the north (Google Earth map created by the author).



In 1992, the multimillion-dollar Mark Clark Expressway was completed and opened, connecting North Charleston and West Ashley to Mount Pleasant and the State Ports Authority. Road improvements and previously unavailable water and sewer services extended into rural areas, property taxes soared, and the city of (see Figure 2.3). Charleston annexed thousands of acres, zoning them for industrial and commercial uses (Bartelme 2001a-a, Frazier 2011).

I included Cainhoy in this study because it is the site of an infamous legal conflict over heirs' property. Staff at the Center for Heirs' Property Preservation (CHPP) and several community leaders recommended I research these cases. While I was unable to gain enough trust in Cainhoy to conduct interviews with heirs' property owners, it was still included because I was able to interview two journalists and find detailed archival information about two related court cases in this community.

### *Phillips Community*

Also in East Cooper, Phillips is a community of approximately 400 hundred African American residents located approximately ten miles southward down the Wando River from Cainhoy. It was originally a plantation community of enslaved African Americans, owned by John Rutledge.<sup>4</sup> During Reconstruction, freedmen and women in from Phillips and Laurel Hill Plantations entered into wage and labor agreements with former plantation owners. These freedmen saved money and pooled their resources until 1878 when they began purchasing ten-acre lots for \$63 each (National Park Service 2005).

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<sup>4</sup> John Rutledge's sons, John and Edward, were delegates to the First and Second Continental Congresses, and signed the U.S. Constitution and Declaration of Independence.

### FIGURE 2.3: Cainhoy Land Use Change

These aerial images show the change in land use on the Cainhoy Peninsula since 1989. The growth of industrial landscapes and infrastructure on the Peninsula, and the conversion of farmland into high-density housing developments are particularly important. A detailed analysis of the Cainhoy peninsula is included in chapter four (Google Earth map created by the author).



These properties were conveyed to individual owners with clear titles, however, Phillips was settled and managed with “a sense of community” that emphasized family continuity and collective access to waterfront (Interview: President of the Phillips Community Association, February 2012).

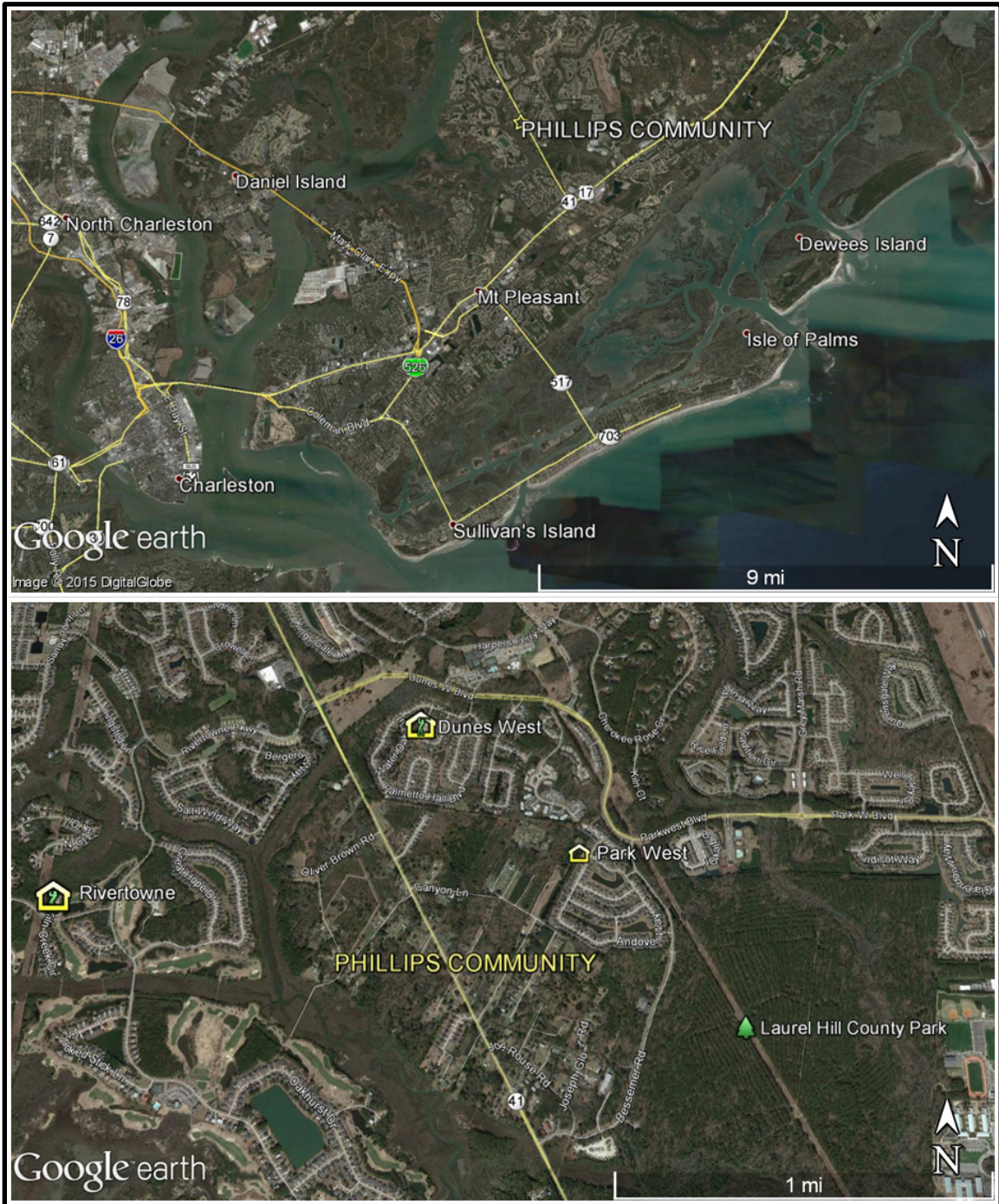
Located just across the Cooper River from the city of Charleston, Phillips is engulfed by rapid urbanization (see Figure 2.4). Today, the Phillips Community is surrounded by the town of Mount Pleasant, whose population grew from 1; 857 to 13; 838 between 1950 and 1980 (Kovacik and Winberry 1987; Kovacik 1993a), and in 2013 was estimated at 74; 885 (U.S. Census Bureau 2013). The result is that Phillips is now boxed in by private subdivisions that have cut off their access to a historic cemetery and is surrounded by the town of Mount Pleasant. The land is still owned by many of the same founding families who now makeup the Phillips Community Association (National Park Service 2005; Goetcheus and Hurley 2009).

I selected Phillips because during my master’s thesis research, on the Gullah-Geechee tradition of sweetgrass basket making, I interviewed several residents who told me about the prevalence of heirs’ property in this community. Further, Phillips was featured in the National Parks Service Gullah Culture Special Resource Study and their community association president serves on the board of CHPP.



**FIGURE 2.4: Phillips Community**

This image shows the location of the Phillips Community. This community is bounded on the east by Laurel County Park, to the south by Highway 17; and to the north and west by the gated communities of Dunes West and Rivertowne. A detailed land use analysis of Phillips is included in chapter three (Google Earth map created by the author).



### *Wadmalaw Island*

Wadmalaw is a rural sea island, which is located just ten miles south from the city of Charleston (see Figure 2.5). During the Civil War, Wadmalaw Island was a part of General Sherman's Reserve, an area where the Freedmen's Bureau and South Carolina Land Commission aided African American land acquisition (Abbott 1967; Bleser 1969; Mitchell 1996). The rich soils of Wadmalaw led to vibrant mixed vegetable farms, with a particular emphasis on tomatoes, owned by both whites and African Americans. The productive soils and seas, combined with the relative geographic isolation of the island have provided a high degree of economic self-reliance and political independence for the residents of Wadmalaw Island (Demerson 1991; Mitchell 1996).

Today, this rural sea island is located in Charleston County and is separated from the city by the rapidly growing Johns Island and the heavily suburbanized James Island. Wadmalaw has retained the most distinctive rural character and feeling of cultural isolation of any of my field sites. The Wadmalaw Island Planning Committee (WILPC) is instrumental in protecting its rural landscapes and preventing urbanization on the island. WILPC has successfully resisting incorporation into the city of Charleston, blocking the extension of Interstate 526 (I-526). This organization has fought hard to retain control over its landscapes, creating a special rural land use plan to guard against resort style development and prevent urbanization (Sinkler 2005b, Wadmalaw Island Land Planning Committee 2006; Halfacre 2012).

I chose Wadmalaw Island because of a personal friendship with an island resident who became a valuable contact for identifying potential interviewees and convinced me that the island's historic resistance to resort style development made it an ideal site for



### FIGURE 2.5: Wadmalaw Island

This image shows the location of Wadmalaw Island. This island is nestled between Johns Island and the mainland. This sea island is separated from the mainland by a network of brackish rivers and estuaries. The land use characteristics of Wadmalaw, as compared to James Island are also distinctive. Chapter five provides more detailed look at this island's landscapes (Google Earth map created by the author).



studying the persistence of heirs' property. A study on Gullah-Geechee extended kinship networks and family compounds from the 1990s convinced me that there was also a strong presence of heirs' property and *de facto* practices of land retention (Demerson 1991).

### *Saint Helena Island*

Saint Helena Island is located approximately thirty miles south of Wadmalaw Island in Beaufort County (see Figure 2.6). During the antebellum period Saint Helena was primarily made up of rice and cotton plantations (Porcher and Fick 2005). It was also a part of the Sherman Reserve and during Union occupation was the center of the Port Royal Experiment, a project implemented and funded by abolitionists to educate and prepare freedmen and women for lives as fully emancipated American citizens (Rose 1964). Freedpeople on Saint Helena Island acquired land through wage and labor agreements with Union soldiers, former plantation owners, as well as sales coordinated by the Freedmen's Bureau and the South Carolina Land Commission (Saville 1994).

Many current African American landowners on Saint Helena Island can trace their ancestry back to this first generation of titleholders. They take pride in their ancestors' accomplishments and battles to protect their land from dispossession during the eras of segregation and post-Civil Rights gentrification (James J. Davis Elementary School Students 2004).

### FIGURE 2.6: Saint Helena Island

This image shows the location of Saint Helena Island, the largest of South Carolina's sea islands (sixty-four square miles). This island is separated from the mainland by a series of tidal creeks and the Port Royal Sound. The large farms that characterize Saint Helena stand in stark contrast to the resort-style development on nearby Hilton Head (Google Earth map created by the author).



Throughout these changing and challenging times, Penn Center was instrumental in facilitating land retention. In the 1950s and 1960s it was a hub for the local Civil Rights movement and served as a regional retreat center for the leaders of the Southern Christian Leadership Conference (Guthrie 1996; Holmes and Wright 1997). During the 1970s it began an educational and legal outreach program called Black Land Services, which was a part of the Black Economic Research Center's (BERC) Emergency Land Fund (Gadson and McDomick 1973; McDomick 1973; Handy 2008; Brooks 2008).

In the 1980s this program morphed into a grassroots program called the Land Use and Environmental Education Program, which hosts land management workshops, offers microloans, and represents heirs' property owners at delinquent tax auctions (Interviews: Penn Center Director, November 2011; former Black Land Services Director, November 2011). Further, its status as a historic site and the historic zoning overlays established to protect it has helped island residents resist the development pressures that have transformed nearby Hilton Head and Beaufort into resort communities (see Figure 2.7) (Sinkler 2005b).

My empirical chapters focus on parcels of land in these four communities, but my research will follow struggles over these parcels into courtrooms, county offices, community meetings, and through the work of activists and Non-governmental Organizations (NGOs) where negotiation, contestation, and resolutions occur (Marcus 1995). Instead of dividing the dissertation into case studies of each community, the empirical chapters are organized thematically, with some emphasizing one particular place over others.



### FIGURE 2.7: Saint Helena Island Landscape Change

These aerial photographs show the remarkable land use continuity on Saint Helena Island. While surrounding areas like Hilton Head and Fripp Islands have been transformed by resort-style development, this island has retained its rural characteristics, with large farms devoted to mixed-vegetable production and homes nestled in the midst of maritime and live oak forests (Google Earth map created by the author).



*Chapter three* begins with a discussion of Saint Helena Island, before investigating the historical production of heirs' property across all four sites. This chapter ends with a discussion of the role historical narratives have played for land preservation efforts in Phillips and Saint Helena.

*Chapter four* consists of two legal case studies from Cainhoy, but closes with an extended discussion of how the litigious and bureaucratic practices covered in the case studies relate to other study sites.

*Chapter five* focuses mainly on Wadmalaw Island residents, exploring how the social practices associated with *family property* have reproduced collective ownership on the island. This chapter also closes with a discussion that applies themes to other study sites.

### **Dissertation Timeline**

As you can see from the timeline in Figure 2.8; the first phase of this project began in 2010. That summer, I completed an internship with the CHPP where I interviewed staff members and used the archives of Charleston's *Post and Courier* newspaper to search for articles about heirs' property. After reading through the extensive news coverage of *Wigfall v. Mobley et al.* in Cainhoy, the staff encouraged me to go to the Clerk of Court archives to read the case files. During this phase of the fieldwork, I also attended several of CHPP's legal outreach seminars in order to learn more about their efforts at protecting heirs' property.

**FIGURE 2.8: Dissertation Timeline**

Time Period	Research & Analysis Highlights
June – December 2010	<ul style="list-style-type: none"> <li>• <u>Interviews</u>: CHPP staff, <i>Post and Courier</i> reporters</li> <li>• <u>Participant Observation</u>: CHPP seminars</li> <li>• <u>Archives</u>: Clerk of Court, Real Property records, public and private libraries, historical society</li> <li>• <u>Presentations</u>: Southeastern Division of Association of American Geographers (SEDAAG)</li> <li>• <u>Writing</u>: UK-IRB proposal</li> </ul>
January – August 2011	<ul style="list-style-type: none"> <li>• <u>Archives</u>: peer-reviewed journals, historiography</li> <li>• <u>Writing</u>: Dissertation Proposal, Qualifying Exams, National Science Foundation grant, Disclosure article published</li> <li>• <u>Presentations</u>: Association of American Geographers (AAG)</li> </ul>
August 2011 – February 2012	<ul style="list-style-type: none"> <li>• <u>Interviews</u>: community leaders and NGO staff</li> <li>• <u>Participant Observation</u>: CHPP seminars, Delinquent Tax Sales, community events</li> <li>• <u>Archives</u>: NGO offices, public and private libraries, historical society, Real Property records</li> <li>• <u>Writing</u>: Notes from the Field article published</li> </ul>
March 2012 – July 2013	<ul style="list-style-type: none"> <li>• <u>Interviews</u>: heirs' property landowners, focus groups</li> <li>• <u>Participant Observation</u>: CHPP seminars, community events</li> <li>• <u>Archives</u>: Real Property records</li> <li>• <u>Presentations</u>: AAG, Dimensions of Political Ecology (DOPE)</li> </ul>
August 2013 – December 2013	<ul style="list-style-type: none"> <li>• <u>Interviews</u>: follow-up interviews with landowners</li> <li>• <u>Archives</u>: Real Property records</li> </ul>
January 2014 – November 2015	<ul style="list-style-type: none"> <li>• <u>Interviews</u>: transcription and analysis</li> <li>• <u>Archives</u>: Real Property records</li> <li>• <u>Writing</u>: chapter drafts and revisions</li> <li>• <u>Presentations</u>: SEDAAG, DOPE, AAG</li> </ul>

Most of 2011 was devoted to familiarizing myself with the published literature on heirs' property, developing and defending a research proposal, taking qualifying exams, writing grants, and extending my University of Kentucky Institutional Review Board (UK-IRB) approval for the next phase of fieldwork. That summer, my wife and I moved to Columbia South Carolina, where she took a full-time job and I took an adjunct position at the College of Charleston, which allowed me to spend part of each week in the Lowcountry for the next two years.

From August 2011 to February 2012; most of my fieldwork was focused on interviewing the directors of NGOs and community leaders in Phillips, Wadmalaw, and Saint Helena. Despite numerous attempts, I was not able to meet with community leaders in Cainhoy. My hope was that NGO staff and community leaders would be willing and able to put me in contact with heirs' property landowners. However, some of these organizations operate under strict confidentiality agreements or were unwilling to reveal the identities of community members living on legally vulnerable parcels. So, my research was largely isolated to the county's Real Property records, where heirs' property is obscured, and NGO contacts, where I was unable to gain much insight into the specific details of social practices on heirs' property.

By March 2012; I had built up enough trust, particularly on Wadmalaw, to secure additional interviews and organize focus groups with heirs' property landowners. From March 2012 to July 2013; I conducted twenty-five interviews with landowners. Through a friendship with a Wadmalaw resident I was invited to be a part of the island's nightlife, where I was able to build trust with local residents. I followed up with these contacts and helped out on the island (mostly by driving people to the grocery store, picking them up



from Johns Island, and taking one resident to a consultation at CHPP), efforts that eventually led to fifteen interviews and three tours of the island. Other interviewees included: six residents in East Cooper, five who live inside the current boundaries of Phillips and one that lives nearby, and four landowners on Saint Helena. Phillips Community Association President and Queen Quet both suggested focus groups would help overcome the obstacles of trust and confidentiality. Each of them helped me organize and moderate a focus group. During the Phillips Focus Group, five new landowners spoke up, and on Saint Helena Island I heard from four additional landowners.

During fall of 2013; I conducted archival research on the properties owned by my interviewees and conducted follow-up interviews to share the results of my research. This led one interviewee to schedule an appointment with CHPP to discuss her property. For my other interviewees, I recorded their comments about the documents I had found. In 2014; I concluded my fieldwork and have spent the last two years transcribing, analyzing, and writing up my results. The rest of this chapter provides more in-depth information about the process of data collection and analysis.

### **Semi-Structured Interviews and Focus Groups**

A major component of this project consists of semi-structured interviews with NGO staff, community leaders, and heirs' property landowners. In all, I conducted interviews with six NGO staff, three community leaders, and twenty-five landowners. Interviews lasted from thirty minutes to two hours based on the willingness of the interviewee. Most interviewees were approached after the initial interview for clarification or updates.

The format for all interviews and focus groups was semi-standardized. Prior to fieldwork, I developed interview guides (see Appendices B and C) addressing all three themes proposed by my research questions. However, most interviews and focus groups took the form of a conversation, allowing for new questions and topics to emerge (Kvale 1996). More often than not, the interviewees guided these conversations and the predetermined questions served only as a final check to make sure I addressed all major topics of this research.

Since there is no clear and accurate public record of heirs' property owners, recruitment relied on convenience and snowball sampling (Kuzel 1999). Convenience sampling consisted of web searches identifying NGO staff and community leaders, attending events, and speaking with residents at bars and restaurants in order to identify potential interviewees. Using a snowball sampling technique, I asked interviewees to recommend others who might be willing to participate and relied on community leaders to promote focus groups.

The UK-IRB approved an informed verbal consent process to be completed at the beginning of each interview and focus group (see Appendices D & E). The verbal consent script informed them about the scope and goals of the research project, how the information they provided would be stored, and how this information would be used in future publications. This script was read to each participant in order to avoid literacy barriers and avoid community perceptions that "signing anything but checks can get you into trouble" (Grabbatin 2008). Interviews and focus groups were recorded only when consent was granted. In the few cases where recording was not possible, interviews were documented with handwritten notes.

### *Interviews with NGO Staff and Community Leaders*

Over the course of this project, I conducted semi-structured interviews with six NGO staff members and three community leaders affiliated with the following organizations:

- The Center for Heirs' Property Preservation (CHPP)
- Penn Center
- The Federation of Southern Cooperatives Land Assistance Fund
- The Gullah-Geechee Coalition
- The Phillips Community Association

These individuals provided expert knowledge on legal, bureaucratic, and grassroots practices and procedures (Kvale 1996). CHPP staff taught me about the litigious practices involved in resolving heirs' property rights. Penn Center and Federation of Southern Cooperatives staff told me about the role of property tax appraisals, land use, and zoning. Community leaders offered insights into these same practices, but also helped me to understand the impact of social networks and grassroots organizing.

### *Interviews and Focus Groups with Landowners*

Given the sensitivity of heirs' property I encountered difficulty gaining enough rapport with landowners to get consent for interviews. I knew from my master's thesis research that differences in race and class between potential interviewees and me would serve as a barrier toward finding interviewees and conducting participant observation (Grabbatin 2012a). Understandably, my interest in the sensitive issue of heirs' property was initially met with suspicion.

At the outset, two community leaders told me that I would have trouble getting interviews because I am white. When I asked one of my interviewees what his neighbor might think if I walked on to his property he told me, "They'd say, oh there's a white

man. He's probably looking for some land" (Interview: Robert, September 2013). However, race was not the only, and perhaps not even the primary, issue in my difficulty finding interviewees. African American scholars working on the Gullah-Geechee coastline have written about the need to overcome this community's strong suspicion of outsiders (Beoku-Betts 1994; Goodwine 1998b). One of my interviewees told me that her only concern was whether I was working to help her family or not because "This is the country. We've all got one color" (Interview: Tina, October 2012).

While NGO staff and community leaders were bound by confidentiality with their clients and communities, getting to know these individuals led to awareness and invitations to events where I was able to build rapport with potential interviewees. For example, my interviews at Penn Center resulted in time spent at various festivals, restaurants, and bars where I was able to recruit interviewees. After interviewing the Phillips Community Association President, I was invited to a cookout in the community where I was able to introduce myself to community members.

I also drew on my master's thesis research in East Cooper by revisiting four of the sweetgrass basket makers who I met in 2006. Three of them were willing to be interviewed about heirs' property, but their familiarity with my previous research was not enough to trust me with the contact information of other heirs' property owners. As described above, my friendship with a Wadmalaw resident led to time spent in bars and front yards where I was able to introduce myself and build rapport with potential interviewees.

In the end I conducted twenty-five interviews with landowners: six in East Cooper, four on Saint Helena, and fifteen on Wadmalaw. At their best, these interviews

involved in-depth conversations about intertwined life histories and land histories (Elwood and Martin 2000; Jackson and Russell 2010). In a few cases, residents even took me on tours of their own land or their communities, and invited me back for follow-up interviews. At their worst, interviewees spoke with me, but had little intention of answering the questions of an outsider. I recall one interview with a man who sat in a parked car while I asked questions through the window. His most frequent response was “you don’t need to know that” (Interview: Malcolm, October 2012). Some people told me to “come back” and after multiple visits I realized they did not want to say no, but did not want to be interviewed.

Of course, heirs’ property is a sensitive issue and I had no trouble understanding why landowners did not want to speak with me. My success on Wadmalaw came from incorporating my routines into “island life,” which involved becoming aware of the residents expectations and at times awkwardly fulfilling those expectations (Interview: Rubin, February 2012). My status as an individual with a steady income and a car provided opportunities to meet people. For example, I was invited to the private African American bar on Wadmalaw, where, as an outsider, I was expected to purchase drinks in order to “break the ice.”

Also, since I drove to the island from the College of Charleston, I was informed of a local transportation custom. Whenever headed to Wadmalaw, I stopped at the last gas station on Johns Island to see if anyone needed a ride home. I also provided rides to the grocery store and even to the city whenever a ride was requested. Finally, though I was careful not to take pictures of any individuals in order to help conceal their identities,

several interviewees told me they would like to have a picture of themselves. So, I took portraits of a few interviewees, had prints made to give as gifts.

My level of education and familiarity with county records resulted in several requests to call county offices, interpret the meaning of official notices, and provide contact information for legal outreach programs. While I fulfilled these expectations, both my own and some resident's perceptions of my power to help resolve complicated bureaucratic issues was quickly shattered (Mullings 1999).

For example, one Wadmalaw resident was attempting to resolve a dispute over land that had been sold at delinquent tax auction. This land turned out to be heirs' property and so one of my interviewees recommended she contact me. She handed me a grocery bag full of letters, bills, and other documents, asking my help to make sense of it all. I helped her contact the county offices involved, made a family tree for her, and even took her to Charleston for a legal consultation. However, the more we learned about her situation, the more dead ends we encountered. She never lost faith in my ability to resolve her problems. Eventually I was advised by her lawyer and other community members to cut ties with her, acknowledging the limitations of my abilities both to her and myself.

Finally, the focus groups organized by the Gullah-Geechee Sea Island Coalition and the Phillips Community Association added the voices of nine additional landowners. Several people in attendance did not participate and the moderators, whom I had already interviewed, ended up contributing most to these conversations. Nevertheless, these focus groups offered important insights into divergent and conflicting ideas about how strategies for handling heirs' property issues. They revealed what Wendy Welford calls

“static”: the conflicts and contradictions within narratives, between individuals who think they are on the same side of a conflict, and agreement between people who think they hold opposing viewpoints (Wolford 2006; 2010). This static revealed tensions between changing worldviews and competing solutions in the context of changing external pressures.

In compliance with UK-IRB procedures all taped interviews and focus groups were transcribed verbatim and stored on a password protected hard drive. The names of NGO staff and community leaders are identified because their organizations and positions are a matter of public record. Pseudonyms are used to conceal the identities of all landowners in order to protect them from legal vulnerabilities associated with heirs’ property ownership.

### **Participant Observation**

My experiences building rapport, interviewing, and attending events provided ample opportunity for participant observation, which I documented with fieldnotes. The six CHPP legal outreach seminars I attended were all organized by community organizations, churches, or schools as an opportunity for residents to learn more about heirs’ property law and CHPP services. The questions from the audience at these events provided insights into the complications and misunderstandings that landowners have about heirs’ property law.

I also attended Beaufort and Charleston County’s 2012 *Delinquent Tax Sales*, which are held each fall to auction off parcels that are two years delinquent on their property taxes. Penn Center staff recommended I attend the tax sales for both counties so

I could see how their influence affected land retention at the Beaufort sale. These events helped me understand the conflict between litigious, bureaucratic, and social practices by seeing how heirs' owners make claims to property and how institutional actors respond to these claims.

In addition to participant observation in these official spaces, I also collected data at informal social gatherings and community festivals. My time in bars, restaurants, and yards not only helped me build rapport, but also allowed me to see how heirs' property connects to everyday concerns and community dynamics. Further, attendance at community-organized cookouts and festivals allowed me to see how landownership is celebrated and how retention efforts are promoted.

These events often take the form of a fall harvest festival, fish fry, or oyster roast. These events help raise money, sometimes to protect a specific piece of communally owned land, but they are also used as an opportunity to promote awareness of pressing issues or decisions. For example, the *Lands End River Festival* on Saint Helena is used to raise money and celebrate the preservation of a parcel of heirs' land that was placed under a conservation easement to protect it from development. Similarly, the Phillips Community Association holds a *Friends and Family Day* on a piece of land that is owned by the association and serves as a picnic and performance area for their community. At the 2012 event I attended, they revealed plans for constructing some additional recreation areas on the parcel and were seeking input from community members at the event. CHPP was present at both events to promote their legal outreach programs.

All of these experiences were documented with fieldnotes, photographs, and audio recordings when possible. Fieldnotes consisted of daily logs and notes or jottings



to keep track of dates, times, names, and important moments during the day. They also consist of journal entries to help me reflect on my experiences and interpretations of those experiences (Kearns 2001; Watson and Till 2010). These fieldnotes are not reproduced in the dissertation, but were helpful in contextualizing interview data during analysis (Lederman 1990) and were used to write “thick descriptions,” the passages in my empirical chapters that recount events, processes, and places in vivid detail (Geertz 1973: 27).

## **Archives**

As mentioned above, archival research in public and private libraries helped me learn more about heirs’ property before I was able to conduct interviews. Archives at the following libraries in Charleston provided access to out of print and rare books, fieldnotes, pamphlets, and newspaper articles to better understand past research on African American landownership:

- Special Collections Department at the College of Charleston
- Avery Research Center for African American History and Culture
- Charleston Library Society
- South Carolina Historical Society Archives

While these collections helped me contextualize and prepare for my qualitative research, I frequently turned to additional archives to follow up on NGO interviews.

- Center for Heirs’ Property Legal Briefs Archive
- Administration Building Archives at Penn Center
- BERC collection at the Schomburg Center for Black Research and Culture

These archives helped flesh out my understandings of how NGO programs, both past and present, address the complicated issue of heirs’ property. The reports and briefs in the CHPP archives revealed the potential solutions and limitations of land preservation

approaches that the organization has considered since it was founded in 2005. Penn Center's archives revealed a similar range of programs and revealed the longer history of land retention programs. From the founding of Penn Center's Black Land Services Program in 1970 to the present, this organization has developed land preservation programs that have blended legal outreach, economic development programs, tax exemption plans, and zoning proposals. This early program was connected to the BERC Emergency Land Fund. Using these archives in conjunction with interviews, I was able to piece together a more comprehensive story of their coordinated efforts and early success in addressing heirs' property loss (Perramond 2001).

County archives served a similar purpose for addressing gaps and adding detail to my interviews with landowners. However, it was the "silences and hidden spaces" in these official records that proved most revealing (Schein 2006: 102).

- Real Property parcel data for Beaufort, Charleston, and Berkeley Counties
- Real Property title cards for Beaufort, Charleston, and Berkeley Counties
- Clerk of Court Office case files, Charleston and Berkeley Counties

While I was interviewing NGO Staff and unable to get interviews with landowners my research consisted mainly of researching court cases and sorting through the county property records, looking for evidence of heirs' property. While this endeavor was helpful in understanding the legal procedures for resolving heirs' property disputes, it proved difficult to identify the presence of heirs' property. The county parcel data lists titleholders, dates of conveyance, and sale prices, showing a landscape that is settled into the dominant regime of *fee simple* ownership. All that appeared in these records were moments where a legal dispute or tax delinquent auction temporarily disrupted ownership rights. Heirs' property was present in those archival sources, but I could not find it in the

numbered parcels and carefully calculated boundaries verified through Global Positioning Systems (GPS).

After extensive participant observation and interviews with landowners, however, I was able to return to these archives for reconnaissance and reinterpretation. I used these archives to respond to participant needs and suggestions, bringing parcel maps and property card data to follow-up interviews. This combination of data helped me see how the calculated boundaries and parcel data were incomplete, unsettled, and arbitrary. In the county's own online geographic information systems (GIS) and satellite imagery I was able to see how houses, gardens, paths, and yards straddled and crossed these property boundaries, revealing a land-use regime that is not legally inscribed, but nonetheless important to the cultural reproduction and economic survival of these African American communities.

### **Data Analysis and Presentation of Results**

Using the mixed-method approach describe above, I have collected a variety of data that provide different lines of sight for understanding the complexity of conflicts over heirs' property rights. Analysis consisted of using my research questions to identify key themes from these data sets and then triangulating data in each chapter to uncover the complexities of heirs' property (Burawoy 1998; Berg and Lune 2011). I not only identified major themes, but also paid attention to the conflicts and contradictions within these dominant narratives (Wolford 2006). These themes were sorted according to how they fit into my initial research questions and theoretical framework. Results were written by moving between theory and empirics like a "taught rubber band" (Herbert 2010: 69). Each of my empirical chapters triangulates different types of data in order to address a

theoretical theme from the political ecology literature and answer a pair of research questions.

*Chapter three* addresses RQ 1.1 (how past events and changing social formations have produced heirs' property) and RQ 1.2 (how contemporary landowners mobilize the past in their land retention efforts) by exploring the historical political ecology of enclosures and commons in the Lowcountry (see Davis 2009). My analysis is presented as a historical narrative constructed from a blend of interview and focus group transcripts, supported by a variety of primary and secondary archival data.

This historical narrative includes excerpts from landowner interviews and focus groups to highlight the historical periods and past events that landowners used to explain the history of their property, justify their ownership claims, and advocate for land retention. This data is blended with primary and secondary historical accounts of the Lowcountry in order to clarify and specify the details of the temporal trajectories mentioned by these landowners. The discussion in this chapter adds NGO interviews and archival data, as well as participant observation to analyze how historical narratives are used in formal programs designed to preserve heirs' property. What results is a narrative that does not present a definitive historiography of heirs' property, but focuses on the "cultural politics of memory," in these communities: those remembrances and memories that link struggles and values of the past with the present (Kosek 2004: 331).

*Chapter four* addresses RQ 2.1 (how litigious and bureaucratic practices affect heirs' property) and RQ 2.2 (how heirs' property owners utilize and respond to these practices) by reviewing the characteristics of enclosures and commons as identified in the political ecology literature on neoliberal natures (see Mansfield 2008; McCarthy and

Prudham 2004). My analysis is presented in two legal case studies, followed by an extended discussion that brings together participant observation, archival data, and interviews.

The legal case studies rely on documents obtained from the Berkeley County Clerk of Court Office, articles from the *Post and Courier* newspaper, and interviews with two reporters who covered these cases. My triangulation of these three data sets emphasizes how the actions and arguments of lawyers, judges, and landowners reveal competing understandings of ownership and value. Further, it illustrates the transformations of ownership rights, responsibilities, and land value that occur when clouded titles are cleared. The chapter closes with an extended discussion that addresses how the litigious transformation of these properties relates to the perspectives of legal scholars, policymakers, and my interviewees. The total result is an investigation of competing and conflicting understandings of property (Wolford 2005), which pays specific attention to the uneven legal ground where those claims come to rest (Sparke 1998; Blomley, Delaney, and Ford 2001).

*Chapter five* addresses RQ 3.1 (extralegal practices landowners use to determine de facto property regimes) and RQ 3.2 (how these practices bolster land retention). This chapter relies on the lessons of the common property literature, with a particular emphasis on how political ecologists reconcile persistent commons with the neoliberal nature literature's emphasis on the power of enclosure (see McCarthy 2009). My analysis is presented in five case studies developed from in-depth landowner interviews and participant observation, followed by a discussion that combines interviews and focus

group transcripts with primary and secondary archival data on Gullah-Geechee cultural traditions.

In contrast to the legal case studies presented in *Chapter Four*, these landowner case studies reveal the complex social practices, networks, and culturally embedded regime of family property. Case studies are drawn from my most in-depth interviews with landowners, focusing on Wadmalaw residents who I was able to build the most trust with and those who were able to answer follow-up questions about archival materials after our initial interview. Instead of attempting to make generalizations about the de facto commons, case studies offer an opportunity to explore the nuance and richness of individual sites (Yin 1994).

These case studies are followed by a discussion that adds additional insights from focus group transcripts and participant observation to address the overlapping and divergent regimes of heirs' and family property. This discussion strengthens the faint bond between the legal scholarship on heirs' property and literature on Gullah-Geechee culture by addressing the understudied relationships between de jure and de facto commons (Dyer 2007).

### **CHAPTER THREE: “THIS IS OUR LAND”: THE HISTORICAL POLITICAL ECOLOGY OF HEIRS’ PROPERTY**

We are in a situation here because Africans were able to purchase land over one hundred years ago. So, you have a situation that’s really unique. In America poor people don’t sit on a million dollar property because nobody ever figured that living near water meant value. But you know, right now if you’re sitting on any of these archipelagos or barrier islands—I mean you’re sitting on valuable real estate.

But it’s interesting that in the Gullah community, we don’t use the word “real estate” because we don’t understand what that means. It’s either our home or our farm. I mean we don’t know what you are talking about. “Real estate?” I mean this is OUR land. This land is not for us to sell. This land is for us to hold for the next generation, to pass along. That’s the way we see land (Interview: Penn Center Director, November 2011).

#### **Introduction: A Visit to Penn Center**

In 2011; I interviewed the Director at Penn Center on Saint Helena Island, a site where he was able to directly illustrate the importance of African American history for contemporary land conflicts. Founded as a school in 1862; Penn Center was part of the Port Royal Experiment, a project funded and implemented by Northern abolitionists to educate and prepare freedmen and women for lives as fully emancipated American citizens. As white teachers and missionaries found out after arriving on the Union occupied Sea Islands, one of the most important issues to freedpeople was the material and symbolic importance of landownership (Rose 1964; Dabbs 1983; Saville 1994).

On Saint Helena Island, and throughout the Lowcountry, freedpeople faced competition from former plantation owners and carpetbaggers when they attempted to buy land (Bleser 1969; Du Bois [1935] 1983; Foner 1988; Harris 2001). Despite this competition, freedpeople on Saint Helena Island did acquire land through wage and labor agreements with Union soldiers, former plantation owners, as well as sales coordinated

by the U.S. Bureau of Refugees, Freedmen, and Abandoned Lands (Freedmen's Bureau), and the South Carolina Land Commission (Webster 1916; Abbott 1967; Bleser 1969; Penningroth 2003). The cash cropping failures of the postbellum period and the Lowcountry's reputation for disease facilitated white flight and bolstered these Reconstruction efforts. The result: from Reconstruction until the mid-twentieth century, the rural Lowcountry and its sea islands were dominated by African American owned farms that provided a high degree of economic self-reliance and political independence (Woofert 1930; Johnson 1969; Guthrie 2001; Ochiai 2004b).

Many of today's African American landowners on Saint Helena Island can trace their ancestry back to this first generation of titleholders. They take pride in their ancestors' accomplishments and battles to protect their land from dispossession during the eras of segregation and post-Civil Rights gentrification (Manning-Thomas 1978; Pennick and Gray 1998; Goodwine 1998a, Lewan and Barclay 2001a, Mitchell 2001). Throughout these changing and challenging times, Penn was instrumental in facilitating land retention.

After the school closed in 1953; it became a hub for the local Civil Rights movement and served as a regional retreat center for the leaders of the Southern Christian Leadership Conference (Holmes and Wright 1997; Bass and Poole 2009). During the 1970s Penn began an educational and legal outreach program called Black Land Services that was a part of the Black Economic Research Center's (BERC) Emergency Land Fund (Black Land Services Inc. 1971b, a, 1972a, Gadson and McDomick 1973; McDomick 1973). In the 1980s this program changed into a grassroots program called the Land Use and Environmental Education Program, which hosts land management workshops, offers



microloans, and represents heirs' property owners at delinquent tax auctions (Penn Center 1986; Wyckoff-Baird 2005; Penn Center 2007 - 2011; Interviews: Penn Center Director, November 2011; former Black Land Services Director, November 2011; Penn Center Staff Member, January 2012). As the Penn Center Director pointed out in the opening quote, this history is foundational to understanding how his community's material and symbolic "situation" was produced, and how the past continues to animate contemporary land conflicts.

This chapter presents a historical narrative that describes how past events and changing social formations have produced this situation, and uncovers how landowners mobilize the past to describe the importance of their land retention efforts. This chapter does not provide a complete historiography of African American property, but focuses specifically on historical time periods and events that were frequently mentioned during landowner interviews. This narrative illustrates how contemporary African American land conflicts are connected to temporal cycles of commodification and devaluation of the Lowcountry landscape. As the Penn Center Director mentioned, these cycles are largely reliant on the changing value of waterfronts. This narrative also illustrates how land retention is seen as a way to honor the memories of ancestral struggle, while also serving as a cultural mechanism for reproducing values that are essential to community cohesion and heritage (illustrated above by the Penn Center Director's reference to the way his community "sees land").

### **Theoretical Framework: Historical Political Ecology**

This chapter utilizes "one of the least visible of the widely recognized research areas" of

political ecology: historical analysis (Davis 2009: 285). To date, only one special issue (published in *Historical Geography*) has directly brought together scholarship under the banner of “historical political ecology” (Brannstrom 2004; Crossley 2004; Hecht 2004; Offen 2004; Walker 2004). Scholars who self-identify as environmental historians and historical geographers have made important contributions to unpacking the temporal dynamics of nature-society relationships, even if they do not directly claim their identity as political ecologists (Cosgrove [1984] 1998; Crosby 1986; Cronon 1991; Denevan 1992; Anderson 2006; Fiege 2012; Newfont 2012). Further, there are several excellent book length studies by scholars who have engaged directly with the field of political ecology and rely heavily on historical methods and frameworks (Carney 2001; Kosek 2006; Davis 2007; Carter 2012; Correia 2013). However, as with other thematic research areas falling under the umbrella of political ecology, the diversity of approaches used in these studies raises questions, namely: “What does the phrase ‘historical context’ actually mean for political ecologists?” (Offen 2004: 20).

*First*, this historiography of African American property illustrates the importance of temporal changes in social formation. While political ecology has become preoccupied with discerning unique forms and practices of neoliberal nature (see McCarthy and Prudham 2004; Heynen and Robbins 2005; Castree 2008a, 2008b, 2010b, 2010a), this study places Lowcountry land conflicts within the “the long-term capitalization of nature” (Watts and Peet [1996] 2004: 12). I use this chapter to show how contemporary struggles over resources are an extension and intensification of longer temporal processes of enclosure and commodification (Marx [1842] 1996; [1867] 1981; Smith 1984; Sevilla-Buitrago 2015). In the case of the Lowcountry, these histories are essential to

understanding the African American community's material relationship to the establishment and perpetuation of landownership.

*Second*, the historical narrative below also draws on political ecology's overlap with landscape studies. Specifically, this chapter illustrates the material and the symbolic role of the past in framing and animating contemporary struggles over land (Cosgrove [1984] 1998; Moore 1998; Neumann 1998; Kosek 2006; Neumann 2011; Schein 2009). Put another way, contemporary struggles over natural resources are not simply about material access and control, but also the mobilization of memories and imaginaries, which can serve as powerful symbols for animating social movements (Kosek 2004; Newfont 2012; Himley 2014). The way that particular groups marshal the past illustrates their understandings of how a place "got that way, how it could be changed, and what it might become" (Carter 2007: 648). In the case of heirs' property owners, their oral histories illustrate the non-economic values they place on their land, which helps to explain the stakes and reasons for their desire to retain ancestral land.

### **A Historical Narrative of African American Property**

The historical narrative below blends together interview, focus group, and archival data collected on Saint Helena Island, Wadmalaw Island, and the Phillips Community. From 2010 to 2013 I conducted twenty-five semi-structured interviews with African American landowners and two focus groups with African American landowners in these areas. Landowner interviews are the starting point for the overall framework of time periods and events included, grounding the narrative in landowner discourses about the past that

are most essential to understanding the forces of dispossession and motivations for land retention within these communities.

I triangulate this data with information collected from libraries and archives in the Lowcountry and beyond, which helped to clarify these oral histories and lead to new questions during follow-up interviews. Most of my archival research took place in Charleston, South Carolina at the following sites:

- Special Collections Department at the Addlestone Library
- Avery Research Center for African American History and Culture
- Charleston Library Society Collection
- South Carolina Historical Society Archives

These archives provided access to popular and rare books, fieldnotes, pamphlets, and newspaper articles to learn more about the region. The records at Penn Center on Saint Helena Island and the BERC collection at the Schomburg Center for Black Research and Culture in Harlem, yielded insights into the collaboration between these organizations. Together, this data provides different lines of sight for understanding the connection between historical and contemporary complexity of land conflicts.

*Enslavement: “Our blood, sweat, and tears is literally in the land”*

Author: Do you still live where your grandfather lived—in the same area or...?

Malcolm: No. Well in the same area, but not where he used to live.

Author: But you’re not sure if it was your grandfather’s land way back?

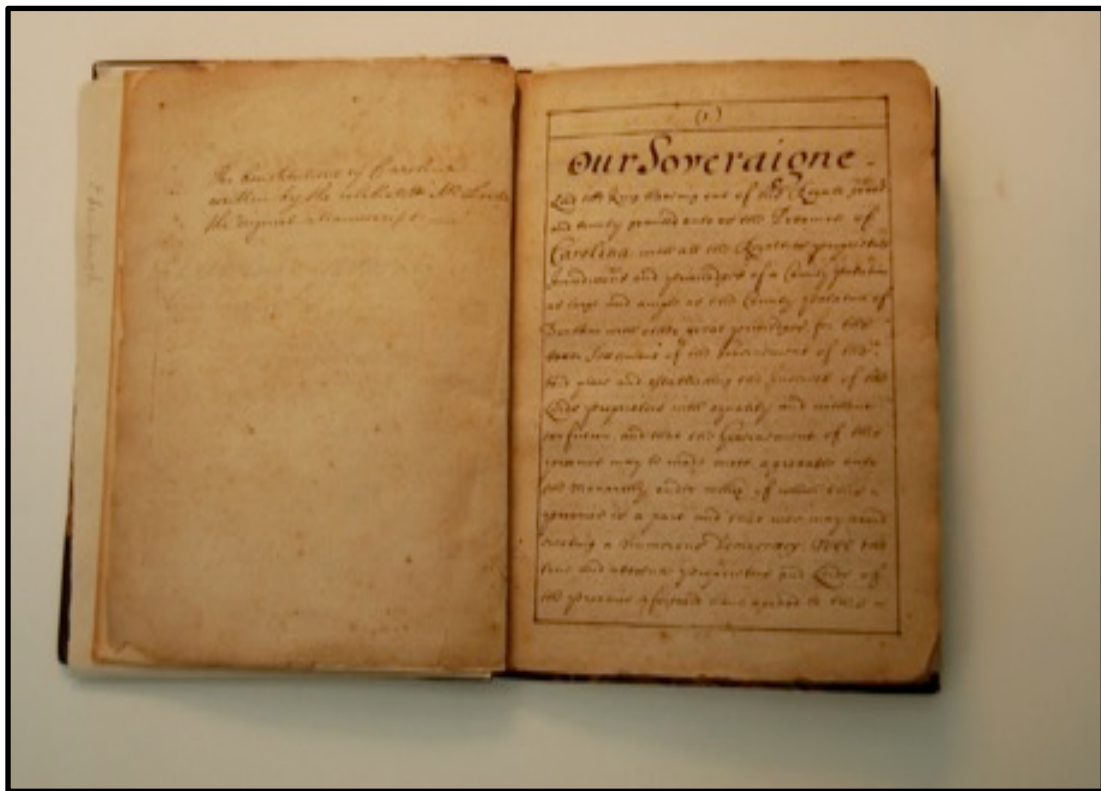
Malcolm: Way back? ... Back in slavery time? ... Hell it couldn’t be!  
(Interview, October 2012)

This quote from an eighty-two-year-old landowner on Wadmalaw shows that while some of today's heirs' property owners have not traveled far from the places where their enslaved ancestors lived, they are acutely aware of how changing social formations have altered their family's relationship to these places. Enslaved Africans were brought to South Carolina as early as 1526 when Spanish explorers visited the Carolina coast and again when English colonists settled along the Ashley River in 1670 (Wood 1975; Bass and Poole 2009). At this time, even the Lords Proprietors, who were politically responsible for and economically motivated to encourage colonization, described the Carolina colony as a place with "no healthy situation" where sickness and humidity brought "a Disreputation upon the whole country" (Lords Proprietors quoted in Wood 1975: 65-66). However, generous land grants from the English crown and racialized interpretations of natural law (written by none other than John Locke) provided enough incentive to facilitate white settlement despite the risks.

In 1669, while serving as secretary for Lords Proprietor of the Province of Carolina, Anthony Ashley Cooper, Locke collaborated with him on the *Fundamental Constitution of Carolina* (see Figure 3.1). The document never became law, but its de facto implementation and influence on subsequent laws helped attract white colonists to Carolina (Edgar 1998; Roper 2004). The declaration gave white landowners "absolute power and authority over negro slaves" (Locke [1669] 2008). This seemingly contradicts Locke's notion of natural law, which was highly influential in the formation of property rights in the American colonies (Banner 2011; Fiege 2012).

### FIGURE 3.1: Carolina's Fundamental Constitution

This photograph shows a handwritten copy of John Locke's Fundamental Constitution of Carolina, which is held in the archives of the Charleston Library Society (photo by the author).



In chapter five of his *Second Treatise of Government* Locke describes how natural law applied to all men equally, and was based on the supremacy of labor for determining landownership and political participation among all men equally. As Locke put it:

Every MAN has a Property in his own Person...Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned [*sic*] to it something that is his own, and thereby makes it his Property (Locke [1689] 1992: 18).

By the eighteenth century American colonists had combined their ideological and economic justifications of slavery with natural law by creating a racialized system of property rights where the bodies and labor of Africans were the property of Europeans instead of a vehicle for establishing personal landownership (Edgar 1998; Bass and Poole 2009; Fiege 2012). While this dominant social formation in the American South interrupted African *American de jure* landownership, there is evidence that several characteristics of Lowcountry plantations contributed to the development of a de facto property rights system within the slave community.

By 1720; white Lowcountry planters were successfully exporting rice with lucrative results. The successful cultivation of this crop required a large West African labor force with the knowledge of how to transform lowland forests, swamps, wetlands, and intercostal waterways into a hydrological instrument that could be harmonized with the life cycle of *Oryza sativa* (Littlefield 1981; Cowdrey [1983] 1996; Carney 2001; 2008). As far as the Lowcountry's reputation for inhospitable climate and disease, the proliferation of standing water necessary to cultivate *Oryza sativa* only made matters worse. These new agricultural landscapes created the perfect conditions for the *Anopheles quadrimaculatus* (the mosquito), which transmitted malaria (Meade 1980; Merrens and Terry 1984; Carney 2001).

In the late 1700s, concerns about the negative effects of rice production led to alternative cultivation practices. Thomas Jefferson described rice as a crop that “sows life and death with almost equal value” (quoted in Carney 2001: 147), and in 1790 he solicited an African variety of rice, *Oryza glaberrina*, with hopes of establishing upland cultivation, which required less standing water. Rice cultivation was also attempted in upland areas of South Carolina, but working rice plantations dominated the Lowcountry until the antebellum period and the effects of their contours have had a lasting effect on the landscape (see Figure 3.2).

I'll tell you, [when I was young] we ran through this pond down here. We were eating turtles and stuff—you know who was going to find the biggest turtle. But those were rice fields. You had this area back here they grew rice. They grew rice over in this area here. All of this was wetland. They grew rice there. They grew rice in this area over here, all of that was lowland. They grew rice up in this area, you know. They grew rice back off in here. Everybody had family that grew rice (Interview: Will, May 2012).

In 1780; a visiting German doctor described how “Carolina was in spring a paradise, in the summer a hell, and in the autumn a hospital” (quoted in McCandless 2011: 18). After several particularly bad outbreaks of yellow fever and malaria in the mid-eighteenth century, most white Carolinians either permanently moved to other colonies or took seasonal refuge in cities, seeking respite from the landscapes of risk that also produced their wealth (Wood 1975; Cowdrey [1983] 1996).



### **FIGURE 3.2: Rice Field Remnants**

In the eighteenth century, the forests of this area of Beaufort County were cleared by enslaved Africans, who built and maintained a system of dikes to control the flow of water for rice plantation agriculture. Today, these former rice fields have become a conservation landscape, managed for waterfowl habitat (photo by the author).



When white slaveholders left the plantations in summer, land managers stayed behind to monitor the task-based labor system. This system assigned a range of daily duties to enslaved people, but left “free time” where enslaved Africans worked to provide for their own subsistence and even accumulate some capital, both of which allowed slave-owners to cut the cost of production and enhance their own profits (Genovese 1974; Kovacik 1993a, Carney 2001). The combination of white flight and a growing number of enslaved people led to a black majority in the Lowcountry by 1800; a majority whose livelihood strategies and social reproduction were connected to the landscape in deep and lasting ways (Wood 1975).

If you look at enslavement, our blood, sweat, and tears is literally in the land. I don't care if it's from your finger getting cut in the field when you were out there working. It's literally in there.

We have to look at our land as a place that holds every bit of blood, sweat, tears, and placenta of everyone who came before us. When babies were born by a midwife the placenta was buried in this land. Burial areas are here. So, now is it just land or is it a living being that has DNA in it, literally and figuratively (Interview: Septima, February 2012).

The current value Septima places on her property is rooted in the land where her ancestors gave birth to their children, the yards where they grew food for their families, and the cemeteries where they buried their dead. Historians argue that the combination of a black majority, landowner absenteeism, and a task system of labor in the Lowcountry led to the development of an informal economy where enslaved peoples claimed ownership over and attachment to places where they were able to control the fruits of their labor (Blassingame 1972; Genovese 1974).

While they were denied formal legal rights to property, Septima's enslaved ancestors were able to claim informal ownership over things and places within their

community through labor and kinship (Blassingame 1972; Joyner 1984). Tilling and planting, fencing and building, the public performance of alliances with others and speaking publicly about property were all a set of social practices for claiming ownership over everything from fields, to hunting grounds, to pigs and grain. These usufruct rights could then be extended to others through flexible networks of kinship, which included bonds of blood, marriage, rearing, and friendship. This de facto property system extended beyond the plantation, both spatially (to fishing spots, city markets, and rural trading posts) and temporally (Penningroth 2003; 2007). These attachments to place spilled over into the property rights struggles and settlement patterns of the Reconstruction era.

*Reconstruction: “Nothing was given”*

You go out into the communities and hold community meetings and you start doing workshops, talking about what’s going on with the land, and why are we not gaining land instead of losing land, and what can we do about it. So, we just started going around holding little meetings all over the community with families and community groups and churches and places and saying, “Wake up! If we continue this trend we’re going to be back in slavery again. We’re going to be a landless people and landless people are enslaved.” So we were trying to open people’s eyes (Interview: former Black Land Services Director, November 2011).

African American landowners in the Lowcountry are hypersensitive about the issue of land loss because their ancestral history connects landownership to freedom. As the former Black Land Services Director points out, when he started working with families on Saint Helena Island in the 1960s, he tried to remind people about the struggles that produced their landownership and the role of land in creating a subsistence culture that sustained them during Union occupation and Reconstruction. For him, landownership was and always should be a symbol of independence (see Figure 3.3).



### **FIGURE 3.3: Emancipation Tree**

This live oak on Saint Helena Island is known as the “Emancipation Tree.” Some residents say this is the site where Union soldiers first read the *Emancipation Proclamation* to their ancestors (photo by the author).



As historian Charles Joyner put it, during the Civil War and through the Reconstruction era, “It was land—land the symbol of a new status to blacks, land the symbol of their old status to whites—that was the chief issue of contention” (Joyner 1984: 234). In the 1860s, during the Union occupation of South Carolina’s sea islands, Northern missionaries came to the Lowcountry assuming that freedpeople were without “notions of the sacredness of property...just conception of what the family relation was...[or] the relation between man and wife,” (Congressional report quoted in Penningroth 2003: 114-5). Union soldiers, guided by “free labor ideology,” assumed that freedmen and women would be pleased to work for wages on the plantations where they once toiled without pay (Flynn 1983; Saville 1994; Schmidt 1998). Of course, they were both wrong.

What missionaries and Union soldiers found, were communities with well-established definitions of kinship-based property rights that were based on the labor of a person’s ancestry and ongoing membership in a kinship-based livelihood network (Rose 1964; Berlin, Miller, and Rowland 1988; Penningroth 2007). Further, instead of harvesting cash crops for wages, freedpeople chose to spend their time engaged in subsistence activities on their homesteads and writing letters to President Abraham Lincoln demanding fee simple rights to what they saw as their land (Rose 1964; Johnson 1969; Magdol 1977; Ochiai 2004a). Union troops countered by encouraging and sometimes forcing freedpeople to pick the crops they had planted under bondage so they would not go to waste (Saville 1994).

These conflicts became a matter of national policy in 1865; when General William Tecumseh Sherman issued Special Field Order No. 15; which set aside “the

islands from Charleston south [and] the abandoned rice fields along the rivers for thirty miles back from the sea for freedpeople” (Sherman [1865] 1991). However, by the end of the year President Andrew Johnson had rescinded this order, restoring ownership to plantation owners and confiscating only tax delinquent land (Oubre 1978; Foner 1988). Nonetheless African Americans in the Lowcountry acquired land, and thus avoided sharecropping at a much higher percentage than in other parts of the American South. But little of this success can be attributed to federal land reform. Programs such as the Freedmen’s Bureau’s Southern Claims Commission and the South Carolina Land Commission were hindered by a maze of legal procedures, overlapping bureaucratic boundaries, frequent firings, and changes in political office (Bleser 1969; Abbott 1967).

Youth: We all know that also during the end of slavery everybody was promised forty acres and a mule, but it wasn’t the whole forty that people were given...

Elder: Wait! GIVEN? Nothing was given. Now, they purchased that stuff.

Youth: You didn’t let me finish brother. I mean you got to hear what I’m saying to really refute what I’m saying. Let me go from A to Z, don’t stop me at B...Anyway, during the end of slavery, every black person in America was promised forty acres and a mule. We had to purchase this property, but it was at a cheaper rate.

Elder: NO! Ten dollars was the going rate. Excuse me! But TEN DOLLARS was the going rate. It wasn’t at a reduced rate now. I went to the county building and I looked at the book. That was the going rate (Phillips Community Association Focus Group, April 2012)

This exchange between an elder and a youth during a focus group in the Phillips Community indicates how historical narratives are produced within the community. This exchange is an attempt by an elder to distinguish between the broader process of African

American land acquisition in the region and the specific process of land in his community.

Sea islands like Saint Helena and Wadmalaw were within Sherman's Reserve. In this area, the Freedmen's Bureau Southern Claims Commission and the South Carolina Land Commission were more successful in issuing deeds through auctions and rent-to-own programs, which in the best-case scenario reduced the cost of land for freedmen (Abbott 1967; Bleser 1969; Oubre 1978; Cimbala 1989). In Phillips Community, their ancestors purchased land in ten-acre lots from plantation owners who faced declining commodity prices and an uphill battle against back taxes.

Several factors contributed to the relatively high percentage of African American landownership in the Lowcountry. White landowners initially sold parcels as a way to keep an African American labor force nearby. However, the declining prices for cotton and rice, as well as the tendency of freedmen to put their own subsistence activities first, resulted in mostly failed attempts at wage labor cash cropping and the further expansion of African American owned land (Woofter 1930; Kovacik 1993b, Harris 2001; Ochiai 2004b). The Lowcountry sustained its reputation as "a sickly land, dangerous to visitors" (Cowdrey [1983] 1996: 170) where abandoned rice and indigo fields could provide little more than breeding areas for mosquitoes. This stigma did minimize the number of bidders at land auctions. However, the exchange between the elder and youth above illustrates, as these communities build their narratives about the past, they are sure to emphasize that land was acquired legally and without financial assistance or privilege.

*Segregation: “People left land as heirs property”*

You know my great grandfather and grandfather bought most of their property in one big piece. And my grandfather he had the right, or the say so, of who would get what portion and how it would be dispersed. If you wanted to build a house as a family member, he would make that decision because it’s in the West African culture—that’s the way they do it in the West African culture. And that worked for many years (Interview: King, November 2011).

In the 1870s, the frenzy of Reconstruction in South Carolina was replaced with the entrenched division of Jim Crow. The rice coast, once a major player in international trade and national politics, became known as a “backwater,” a place reclaimed by wilderness and plagued by extreme poverty (Haskins 1970; Cowdrey [1983] 1996; Harris 2001). During the early twentieth century, African American communities in the Lowcountry were far from isolated, but they did remain physically, socially, and economically dissociated (Montgomery 1994; Mufwene 1997; Matory 2008).

Some worked seasonally on the smattering of private island getaways and hunting preserves owned by carpetbaggers with last names like Pulitzer, Guggenheim, Vanderbilt, Biltmore, and Rockefeller (McFeely 1994; Harris 2001; Frazier 2011). Others worked seasonally tonging for oysters, packing shrimp, and cutting timber. But these activities were engaged in cautiously and tenuously as their purpose was to supplement the living they could earn from their own land, which they fought hard to protect (Harris 2001; National Park Service 2005). Until the mid-twentieth century, the Lowcountry landscape remained dominated by a majority of African American farming communities who created an effective subsistence economy in an environment where few whites lived, traveled, or saw much use for (Johnson 1969; Woofar 1930; National Park Service 2005).



Historians and anthropologists have argued that the Lowcountry's black majority between 1800 and 1940; as well as this relative cultural and economic isolation facilitated retention of West African cultural characteristics and the development of a unique pidgin language and culture known as Gullah-Geechee (Twining and Baird 1991c, Montgomery 1994; Pollitzer 1999; Morgan 2009; Hargrove 2005a). Transatlantic continuities aside, my interview data and comments made by Gullah-Geechee activists illustrate that West African heritage serves as a galvanizing force for today's land preservation movement (Demerson 1991; Queen Quet 2001; Campbell 2002; Interviews: Penn Center Director, November 2011; Queen Quet, February 2012).

People left land as heirs' property so that it would always be available for the next generation to use. It has been a hindrance in some ways, but is also protected black land from lawsuits and foreclosures over liens and mortgages, particularly during times when lending was discriminatory. Did it work? Well, look around and you'll see that lots of people still own heirs' property. Heirs' property has been a hindrance in some ways, but it also has protected (Interview: former Black Land Services Director, November 2011).

While the first generation of African American landowners used legal and bureaucratic practices to solidify ownership claims, their descendants were less trusting of these systems and began to rely on extralegal practices of land tenure (Mitchell 2001; Rivers 2006a). As the former Black Land Services Director points out, when he started the program at Penn Center in the 1970s, people primarily relied on the extralegal practices their ancestors had used to avoid land dispossession (Black Land Services Inc. 1971a).

Avoiding *de jure* practices such as will making, probating, conveyance, and platting was done partially in the name of protection. Fear and distrust of the white dominated judiciary and government, as well as educational inequities that led to low rates of literacy kept their ancestors out of the county courthouses and property offices

(Oldfield 1989; Gadson and McDomick 1973; McDomick 1973; McDomick 1977). Oral wills, dowries, family compounds, the performance of usufruct rights, and communication with elders were and still are important for establishing property rights (Bethel [1981] 1997; Goodwine 1998c, Campbell 2002). Aside from their tactical value, these practices were also consistent with lingering rural superstitions about “wills hastening death” and cultural understandings that “the land belongs to the community and family” not to individuals (Interviews: Penn Center Director, November 2011; Black Land Services Director, November 2011; Queen Quet, February 2012).

While these practices provided a measure of protection from legal theft and economic dispossession, they also created legal ambiguities (James J. Davis Elementary School Students 2004; Rivers 2007; Deaton, Baxter, and Bratt 2009; Mitchell, Malpezzi, and Green 2010). When someone dies without a probated will in South Carolina, the title remains clouded until a legal action is filed to clear it. These properties became vulnerable to legal dispossession because although all descendants held a collective inheritance in these properties, any individual could file a claim to partition their interest (Fieldnotes 2010-2012; Rivers 2007).

In short, extralegal practices helped these communities retain their land and make ends meet even during lean years of the Great Depression (McGee and Boone 1977; Klindienst 2006). However, the inattention to the legal status of these parcels led to the proliferation of heirs’ property, a vulnerable form of legal ownership that extends property rights across generations and along the limbs, branches, and even twigs of family trees regardless of their connection to the land.

*Destructionment: “Everything Change Up Now”*

The reason you find all the blacks on the water is cause the white man said that was no good land. What they called no good land, now that’s prime property. Everybody wants a piece of land on the water (Interview: Maya, September 2006).

During the mid-twentieth century, as the Gullah-Geechee people put it, “Everything change up now” (Jones-Jackson 1987: 165). Bridges began to connect these communities to the mainland while road and utility construction literally paved the way for residential development (Smith 1991; Tibbetts 2004; Halfacre 2012). Landscapes dominated by truck farming and fishing were transformed into landscapes focused on aesthetic consumption for second homeowners, beach vacationers, and tourists interested in American history (Danielson 1995; Tibbetts 2004; 2007). The completion of Hilton Head’s Sea Pines Resort in 1957 is often cited as *the* landmark development ushering in these changes, but the foundations for a large scale region-wide development were laid much earlier (Jones-Jackson 1987; Joyner 1999).

In the 1920s, Rockefeller Foundation researchers connected the eradication of malaria to economic development. One researcher claimed to have “surveyed many communities, colored and white, in which malaria was a dominant factor in producing ill health and economic stagnation” (Rockefeller Foundation Report, 1924; quoted in Cowdrey [1983] 1996: 132). Over the course of the mid-twentieth century, federal campaigns against malaria, the proliferation of air conditioning, and the extension of infrastructure to rural areas led to changing perceptions of the Lowcountry. It was transformed from, as Maya put it, “no good land” to prime property (Interview, September 2006).

Once we found out urban renewal meant “negro removal” they started saying gentrification. Then when we realized that gentrification was tied to the gentry, the southern gentry, they started now with the “community revitalization.” That’s what they call it and “community empowerment zones.” In the North it’s community empowerment zones and in the south it’s community revitalization. It all means we blight your property, just y’all who look like this and then theirs is fine (St. Helena Island Focus Group, May 2012).

These changes brought an end to the Lowcountry’s black majority, sparked the urban expansion of Charleston and Savannah, and led to an explosion of resort-style development on Lowcountry sea islands and coastlines (Goodwine 1998a, Tibbetts 2004; National Park Service 2005; Halfacre 2012). Some call this process “development” or “growth,” but Queen Quet, calls it “destructionment,” a time of “family removal and the breakdown and dissolution of cultural ties...that has eroded a cornerstone of America: the Gullah culture” (Goodwine 1998a, 164).

During the Jim Crow era, the ability of African American community to reap lasting economic benefits and offer political guidance on this growth was severely restricted. Further, racialized hiring and lending practices, as well as educational inequalities continue to hinder the number of black owned businesses and high-income employment (Manning-Thomas 1978; Nelson 1978; Manning-Thomas 1980; Hargrove 2007). Though better paid than their ancestors, Lowcountry residents have been plagued with problems of extreme poverty, with African Americans largely engaged in low-wage and seasonal service sector jobs that seldom provided an opportunity to keep up with the rising cost of living (Haskins 1970; Joyner 1999; West 2006; Tibbetts 2007). Coastal development also provided an economic incentive for individuals to expose the legal vulnerabilities of heirs’ property. Those who left during the Great Migrations of the early and mid-twentieth century became a risk to land retention. Many of them lost their

material and symbolic connection with the land and began to see it simply as a commodity whose value had dramatically increased (Anderson 1983; Smith 1991). After successive generations of ownership, the number of heirs multiplies and inheritance becomes confused to the point where “one could conceivably have claims to many tracts of lands from many different foreparents” (Demerson 1991: 67).

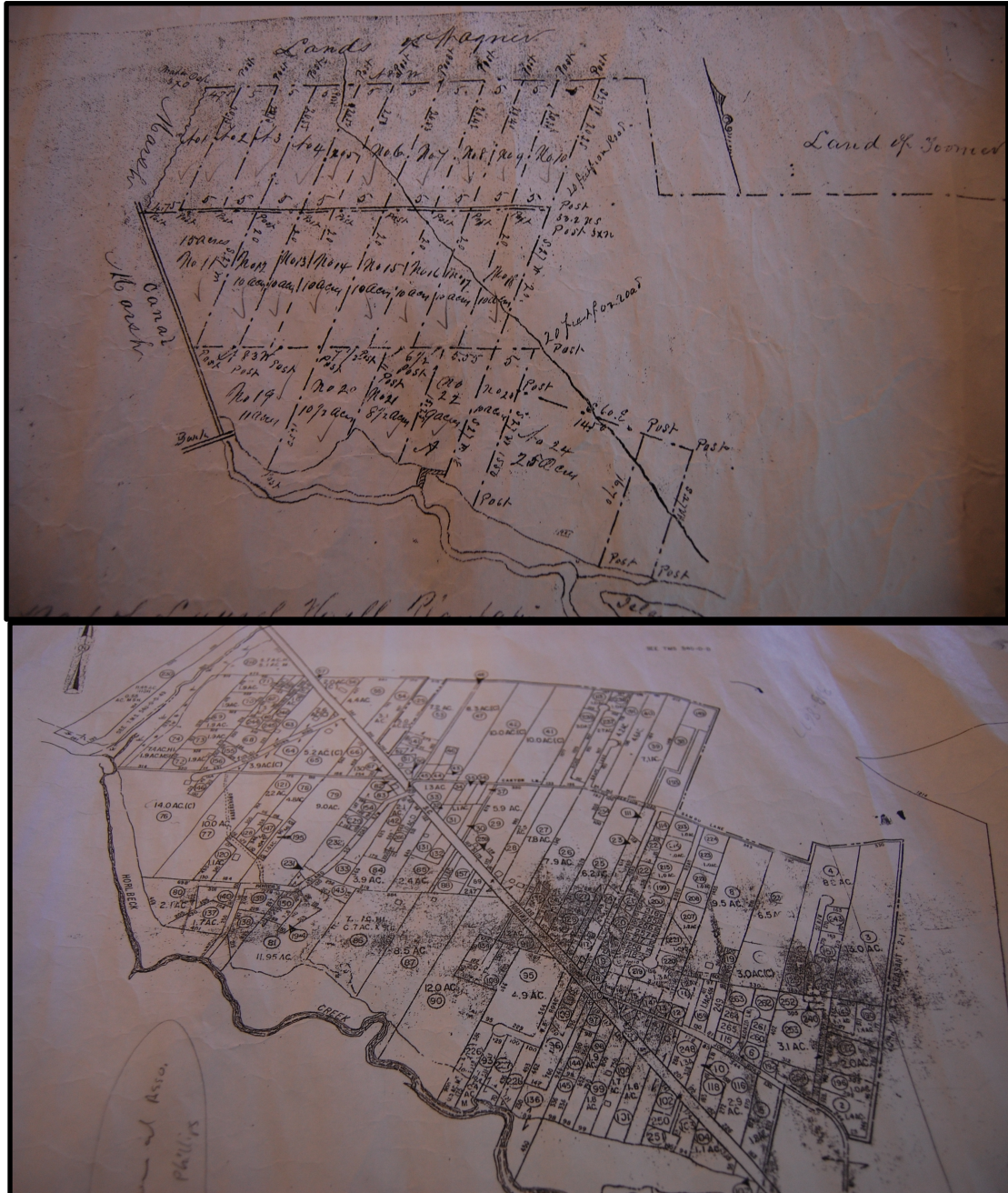
As the Lowcountry became a landscape of growth it was not difficult for lawyers to convince disgruntled or distant heirs to expose the legal vulnerabilities of these tangles of rights and fractions of interest that led judges to force land sales in order to equitably divide proceeds instead of properties (Rivers 2007; Mitchell, Malpezzi, and Green 2010). During this period it also became common for land speculators to raise their paddles at auctions when landowners with low-incomes fell behind on their property taxes (Carawan and Carawan 1967; Pearce 1973; Derosa 1997; Joyner 1999; Metoyer 2005).

### **Discussion: The Value of Land and Land Values**

The historical narrative above directly illustrates how changing property regimes and perceptions of land value produced patterns of African American land acquisition and dispossession. The quotes from today’s landowners were included to show how this history is marshaled in contemporary land conflicts and understandings of land value. In this discussion I expand on this point by showing how organizations in East Cooper (the Phillips Community Association) and on Saint Helena Island (Penn Center) mobilize the past in their struggles against land dispossession.

### FIGURE 3.4: Plats of Phillips Community

These two plats show the parcels of the Phillips Community in 1878 and 1996. The Phillips Community Association President used them to show me the continuity of ownership and land use (photos by the author).



### *Protecting the Phillips Community*

So that's Phillip. And it's got a real distinct boundary. All the rest of the maps you'll, if you look and you'll see the same thing. Phillips changed a little bit, but basically this is Phillip, but that's been the Phillips plantation (Interview: President of the Phillips Community Association, May 2012).

The plats on the previous page show the continuity of the material landscape in Phillips despite the dramatic temporal changes described above. During Reconstruction, freedmen and women in the East Cooper area entered into wage-labor agreements with the owners of Phillips Plantation. They saved their money and pooled their resources until 1878 when they began purchasing ten-acre lots for \$63 each (Phillips Community Association Focus Group, April 2012; National Park Service 2005). These properties were conveyed to individual owners with clear titles. However, the land-use history shows that, while each family had "their place with their house" Phillips was settled and managed with "a sense of community" that emphasized family compounds and usufruct access to the waterfront for the entire community (Interview: President of the Phillips Community Association, February 2012; Phillips Community Association Focus Group, April 2012).

These traditions of collective family ownership combined with distrust of local government discouraged landowners from leaving wills and the property passed intestate. However, the President of the Phillips Community Association argues that the legal complications associated with these heirs' properties also helped protect his community because the complicated process of clearing title and the tight-knit society that these practices created discouraged developers from interfering.

The ancestors left it as heirs' property because they wanted it to go to the whole family. They wanted people to have a place to go back to. These people couldn't read and write, but they were not stupid. Look at the property, it speaks for itself, it's still in those families (Interview: President of the Phillips Community Association, February 2012).

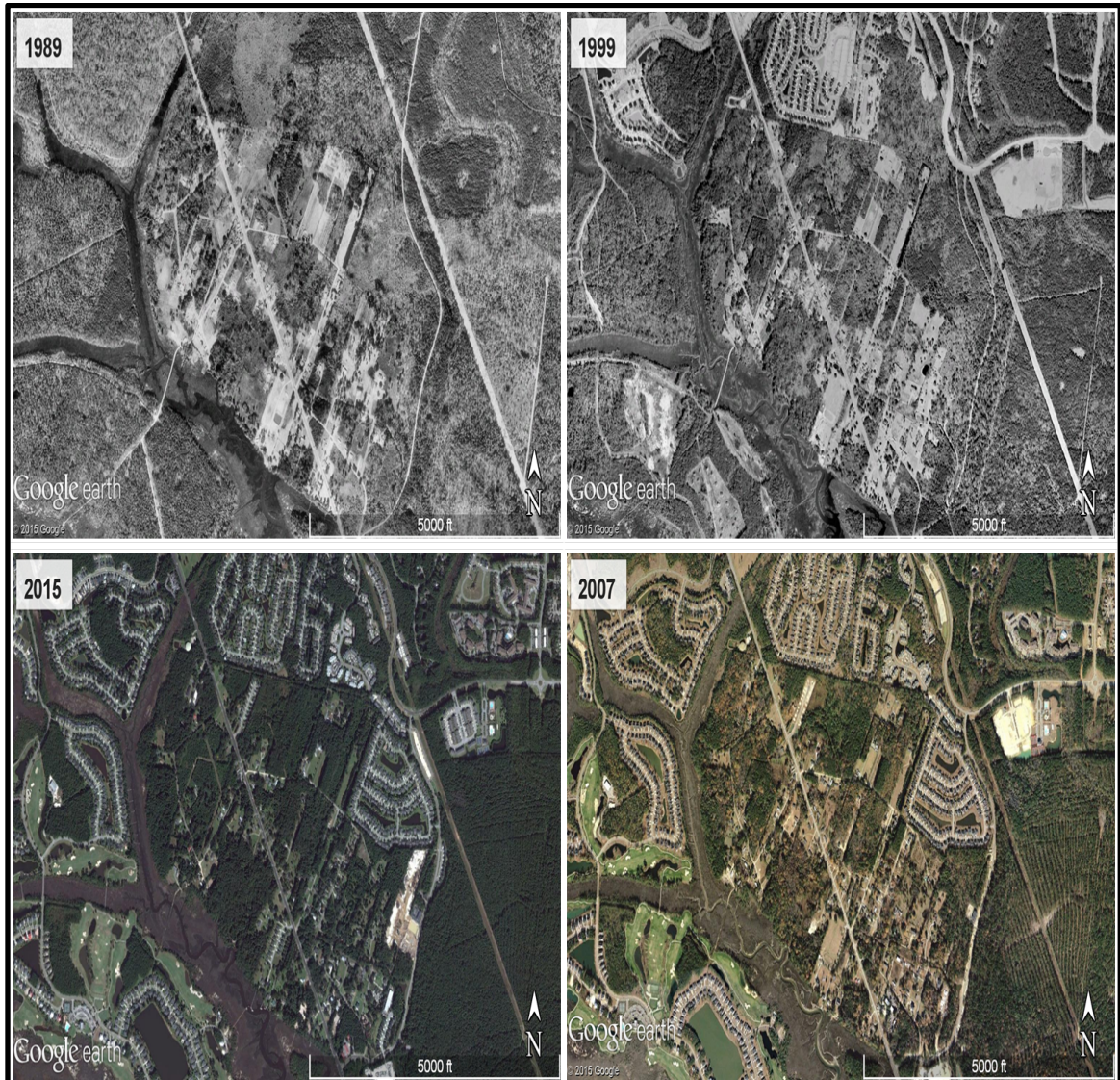
As the plats in Figure 3.4 showed, lot sizes have contracted due to the decline of farming and generational expansion, but this contraction is also in response to zoning restrictions on housing density that prompted families to partition their lots in order to maintain family compounds. Further, the families living in Phillips today can trace their ancestry back to ancestors who purchased the original ten-acre lots (Phillips Community Association Focus Group, April 2012). This deep historical knowledge is partly rooted in the community's strong sense of place, but, like other African American communities in the Lowcountry, their knowledge and reverence for the past are rooted in efforts to retain their land in a changing landscape.

Located just across the Cooper River from the city of Charleston, Phillips is engulfed by rapid urbanization tied to the in-migration of people from parts of the Northeast and Midwest, as well as the growth of the ecological and historic tourism industries (Tibbetts 2004; Hurley et al. 2008; Halfacre 2012). Today, Phillips is surrounded by the town of Mount Pleasant, whose population grew from 1; 857 to 13; 838 between 1950 and 1980 (Kovacik and Winberry 1987; Kovacik 1993a), and in 2013 was estimated at 74; 885 (U.S. Census Bureau 2013). The result is that Phillips is now boxed in by private subdivisions that have cut off their access to a historic cemetery and Mount Pleasant wants to incorporate Phillips to expand its tax base (see Figure 3.5).



### FIGURE 3.5: Phillips Community Landscape Change

These four aerial photographs of the Phillips Community show the continuity of community layout and land use, alongside intensive residential development. Three gated communities: Rivertowne to the west, Dunes West to the north, and Park West to the east all exhibit the high-density residential housing with waterfront vistas that is typical of coastal development. These developments have blocked access to fishing areas and a historic cemetery, both of which have been used by Phillips residents since it was founded (Google Earth map created by the author).



In 1989, residents formed the Phillips Community Association to help preserve their heritage and implement their community's vision for the future. To preserve landownership within their community they created an archive of deeds and plats. The association also encourages families to seek out legal advice from the Center for Heirs' Property Preservation (CHPP) and has a community liaison on the center's advisory board. Finally, the association has purchased an eight-acre tract within Phillips to keep as "community land" and serve as a place for events like their annual "Friends and Family Day" (Interview: President of the Phillips Community Association, February 2012).

To solidify their status as a historical community the association hired a private archaeological firm to document historic and archaeological assets (Tibbetts 2004) and has worked with university faculty to map their historic boundaries (Goetcheus and Hurley 2009). These efforts have bolstered their "sense of community and belonging...we know who we are, that is tied into the land and the landscape" (Interview: President of the Phillips Community Association, February 2012). These efforts have also given them political leverage to protect their community.

Their efforts to gain zoning protections as a historic community have been thwarted by the lack of historic structures eligible for the National Register of Historic Places (National Park Service 2005). However, the South Carolina Department of Archives and History has placed a historical marker in Phillips to legitimate their past (see Figure 3.6) and they are included in the National Park Service Gullah-Geechee Heritage Corridor, which recognizes their cultural significance (Otterbourg 2014; Behre 2006). These recognitions do not offer any formal protection, but have helped their efforts at resisting incorporation into the town of Mount Pleasant.



### FIGURE 3.6: Phillips Community Markers

The sign at the top of this page was put up by the Phillips Community Association to demarcate their neighborhood boundary. The sign at the bottom is a historical marker, placed in Phillips in 2002 by the South Carolina Department of Archives and History (photos by the author).



A lot of people say or think we are against development, but we just want people to think about what is best for the whole community. For example, one guy wanted to rezone his property so he could put a business there for the future of his son. But what happens to the property nearby when he rezones for business. It's important to do things that are going to benefit the entire community (Interview: President of the Phillips Community Association, February 2012).

Their resistance to incorporation has blocked improvements to roads, water, and sewer lines. However, it has also provided additional protection from town zoning and tax increases that they fear would lead to gentrification (Interviews: Carver, May 2012; President of the Phillips Community Association, May 2012). However, Phillips still faces the challenges of how Charleston County sees land, namely its tax assessment and zoning policies, a challenge that Penn Center is working on in Beaufort County (Interview: Penn Center Director, November 2011).

### *Protecting Saint Helena Island*

As the Penn Center Director pointed out in the opening quote of this chapter, his community's way of seeing land is rooted in understandings of "home" and social reproduction. He described how this vision of the landscape differs from seeing land as "real estate," which emphasizes viewing land solely as a commodity. Conflicts between these two perspectives (the first Gullah-Geechee and the second Beaufort County's neoliberal interpretation of "best-use") can cause "big problems" for landowners (Interview: Penn Center Director, November 2011), a point further illustrated by a Saint Helena Island resident during one of my focus groups.

We think of land as part of the family. It's part of us, the land itself. I always tell people: the land is our family and the water is our bloodline. How can an Anglo person gonna approach a black person in the South, on a sea island, and say, "You're gonna do what now?" So, you gonna give

me \$10,000 to sell my whole family. That's what you just said." So now all kinds of collective consciousness of slavery comes back (St. Helena Island Focus Group, May 2012).

My research on Saint Helena Island illustrates this clash of values most directly. For starters, Gullah-Geechee scholars have continually highlighted the persistence and strength of West African linguistic, storytelling, worship, craft, culinary, and agricultural traditions on Saint Helena (Crum 1968; Rosengarten 1986; Jones-Jackson 1987; Campbell 2002; Klindienst 2006; Cross 2008; Rosengarten, Rosengarten, and Schildkrout 2008). The strong cultural identity of the island is promoted by Penn Center, but more directly by island resident Queen Quet, who is leader of the Gullah-Geechee Sea Island Coalition and represents the Gullah-Geechee Nation in a regional, national, and international capacity (Queen Quet 2001; Behre 2006; Quet 2010; Queen Quet 2012; Quet 2014a). Finally, Saint Helena's efforts at preserving land stand in stark contrast to the nearby resort island of Hilton Head, where gentrification pressures have facilitated widespread African American land dispossession and cultural assimilation (see Figure 3.7) (Wilson 1983; Danielson 1995; Halfacre 2012).

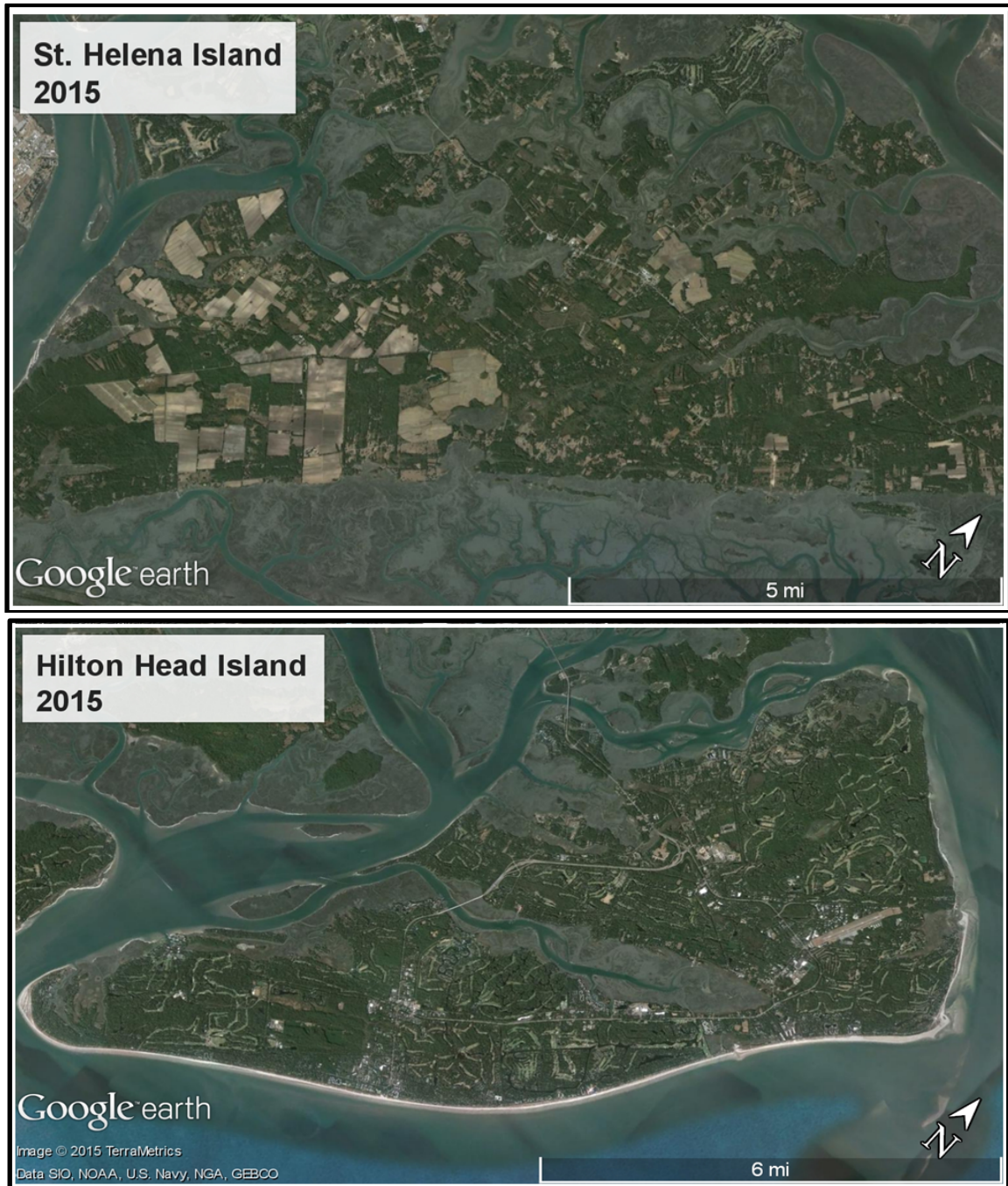
How this county [Beaufort] perceives land-use is also a big problem. Let's say there is an elderly fixed-income family living on a small farm next to the water, which the people who own the land don't give a doggone about the water—they would rather move away from that water because of their experience with hurricanes. And let's say, next door some developer builds a nice home or condominium. All of the sudden Beaufort County sees the excellent tax base and that person's tax goes up because "You're not making the best use of the—of your—land" (Interview: Penn Center Director, November 2011).

As the Penn Center Director points out, these conflicting values are manifested in the way Beaufort County assesses property values and implements taxation.



### FIGURE 3.7: Saint Helena and Hilton Head Islands

The aerial photograph of Saint Helena Island show large farms and the forested historic African American neighborhoods. By contrast, Hilton Head Island began a transition towards resort-style development in 1957 (Google Earth map created by author).



Real property appraisals in both Charleston and Beaufort Counties rely on three primary methods: cost, sales comparison, and income approach. The cost approach assesses a parcel value based on the property's current land-use designation. The sale comparison assesses value based on recent sale prices of similar parcels nearby. The income approach assesses value based on the potential future return on investment and property taxes (Charleston County Assessor's Office). Property values in both counties are reassessed every five years to account for changes in fair-market value based on the methods described above (Beaufort County Assessor's Office). These methods offer a context dependent method of estimating the commodity value of land in order to generate tax revenues for expanding utilities and infrastructure in order to promote new growth (Faber 2007b, Covington 2009a, Thompson 2010; Conley 2012a), but can also result in the displacement of land-rich, cash-poor households (Metoyer 2005; Shapiro 2008; Severson 2012; Slade 2013).

Organizations like the CHPP, Penn Center, the Gullah-Geechee Sea Island Coalition, Phillips Community Association, and the Federation of Southern Cooperatives encourage landowners to mitigate their property tax burden by applying for homestead and agricultural exemptions that reflect the overlap between community and county values. Further, CHPP and Penn Center have both encouraged families to engage in sustainable timber management strategies, both to provide revenue for tax payments and take advantage of federal grant programs (Wyckoff-Baird 2005; Cantu 2012; Donnan 2005; Charleston Regional Business Journal Staff 2013). Despite these efforts, properties still fall into tax delinquency and are placed on the county auction block either due to bureaucratic complications with heirs' property or the inability to pay.

In the 1970s, national concerns about black land loss inspired the BERC to start an Emergency Land Fund, which coordinated with Penn Center's Black Land Services program until the 1980s to offer legal and financial support to families in danger of losing their land (Gadson and McDomick 1973; McDomick 1973; McDomick 1977; Fund et al. 1980). The legacy of these programs continues today with Penn Center's Land Use and Environmental Education programs (James J. Davis Elementary School Students 2004; Interviews: Penn Center Director, November 2011; Black Land Services Director, November 2011; Penn Center Staff Member, January 2012). Property tax bills for heirs' property are sent to the deceased titleholder at their home address, unless descendants contact the assessor's office (Slade 2013). Each year, Penn Center staff review the tax rolls and contacts heirs who owe back taxes or whose land is slated for auction. They help these families navigate the bureaucratic procedures for settling their debt and even offer microloans. Penn staff also attend the Beaufort County Delinquent Tax Sales to help heirs who are there to bid and to make a plea to the bidders (Interviews: Black Land Services Director, November 2011; Penn Center Staff Member, January 2012).

For at least the last thirty years, a Penn Center staff member has spoken to bidders before the auction begins. Most years, that person is the former director of Black Land Services, who asks them "not to bid against family members whose property's going up for delinquent taxes" (Interview, November 2011). He explains the deep historical and cultural connection that Gullah-Geechee families have to their land, and that families in attendance are attempting to preserve that land by rescuing it from the auction block.

I attended the 2012 auctions in Charleston and Beaufort counties. The Black Land Services Director assured me (and my archival research has corroborated) that that year



was a typical example (Faber 2007b, a, Hseih 2007; Penn Center 2007 - 2011; Covington 2009b, a, Thompson 2010; Conley 2012b, a, Slade 2013). As the parcel numbers for African American owned land were called, heirs stood up, bidding paddles in hand and simply said “heirs’ property.” Only once did someone else bid against them.

I asked the Black Land Services Director how a non-binding request for respecting non-economic values had such an impact. *First*, after these auctions, families have one year to redeem their property by paying the back taxes, penalties, and bid amounts. So, bidders may avoid property if they think a family member may try to recover it. *Second*, most of the large valuable tracts of waterfront property in Beaufort County have already been sold and developed. *Finally*, the Black Land Services Director suggested that while he expected the bidders to be purely interested in economic gain, the history and values that his appeal hinges on often resonate with them. Even if property is reclaimed, bidders still receive their bid money plus interest that begins at 3% and increases by 3% each quarter, for a guaranteed 12% on investment if reclamation takes a full year (Conley 2012b). However, he is still surprised by how many times a bidder with “deep pockets” has contacted Penn Center after the auction and contributed to their microloan land retention fund (Interview: Black Land Services Director, November 2011).

### **Conclusion: The Cultural Politics of Memory**

The historical political ecology narrative I have presented here offers some insights into the links between “environmental and agricultural change, property laws, and ideas of nature” (Davis 2009: 286). More than simply providing context, this narrative illustrates

how the past animates contemporary resource conflicts. The Lowcountry's landscape is, and has been, a contested space, shaped by struggles between divergent visions of property and value with the outcome determined by those with the power to inscribe that value in the landscape at a given time (Duncan and Duncan 2004).

If we lose our property, we lose our history (Cainhoy community leader  
Fred Lincoln quoted in Bartelme 2001a-b).

As Cainhoy community leader Fred Lincoln points out, the links between Lowcountry African American communities, land, and history are inextricable. Landowners reinforce this link by circulating oral histories, reflecting on their own memories of the past, and seeking out the historical record to expand their knowledge. The narratives they construct are consequential. They constitute what historical political ecologist Jake Kosek calls a “cultural politics of memory,” which does more than simply recount past events, but brings resources and communities into a direct relationship with the past (Kosek 2004: 331). That relationship shapes struggles over the material and symbolic landscape in the present. The cultural politics of memory for African Americans in the Lowcountry shows how temporal processes of acquisition and dispossession, as well as valuation and commodification are essential to the dynamics of contemporary resource conflicts.

For community members who share this cultural politics of memory, landownership is attributed to “the old people...the generation who came through slavery, acquired land, and set about the arduous task of clearing land on which they established their homes, their farms, and their communities” (Day 1982: 12). The present generation holds use rights that are founded on the labor and struggle of their ancestors, a struggle that they have an obligation to continue. As the examples from throughout this

chapter point out, when today's landowners fail to appreciate these memories, it can have dramatic material impacts. This is why it is so important to the elders in the Phillips Community that the youth know their history. And why the elders think it is just as important for the youth to understand that the land was not given to their ancestors, so they will understand what it means to protect the land.

This time of year is critical. It is the time that tests family relationships and shows those that recognize the true value of the family land. This is tax time! In some families when there are those individuals that do not want to contribute to the land taxes associated with the property. These family members do not tend to think back on all that it took for their ancestors that left this property to their heirs...There are many who have allowed that legacy to be sold at auctions just as their ancestors had been (Gullah-Geechee Sea Island Coalition leader Queen Quet 2014b).

While the practices of assessment and tax auction reflect the conflicts between community values, the state, and outsiders, it is also important to recognize how divergent values within the community can also result in land loss. In a 2014 podcast, Queen Quet pointed out how tax season uncovers how different family members view the value of their land and the importance of the historical processes that produced those values. From her perspective, all African American landowning families share a deep historical connection with the soils of the Lowcountry, whether they value that connection or not.

However, keeping up with rising property taxes is often beyond the means of resident heirs, who are most likely to express a strong non-economic connection to the land. These heirs often have to convince non-resident heirs, distant family members, and the wider community to assist at-risk landowners with their property taxes. For example, some communities hold "Friends and Family Days," festivals to collect tax money to mitigate further increases in land value or to protect access to community commons such

as cemeteries, waterfronts, hunting property, and picnic areas. Similarly, reunions and other celebrations can serve as an opportunity to reconnect distant kin with family property, collect tax money from relatives, or coordinate action to protect these parcels.

As landscape scholar and historical geographer Denis Cosgrove has pointed out, “the way people see their world is a vital clue to the way they understand the world and their relationship to it” (Cosgrove [1984] 1998: 9). The future of the Lowcountry relies (in part) on what lenses landowners use to see their land and their relationship to it. Will they continue to see these parcels as homes that provide the basis for independence and social reproduction? And will they continue to see themselves as the latest in a long line of ancestors whose duty is to protect these landscapes so the next generation can have the same? And can they convince others to see this symbolism and take material actions to reproduce landscapes that reflect these visions?

Lawyer Josh Walden has been working with African American families engaged in legal conflicts over land for since 2008. What he has seen during that time offers hope.

This land means something more than just sticks and trees and grass. It's something that is a heritage; it's something that a grandfather or a great-grandfather acquired and passed down. There's usually an emotional component to these cases unlike anything I've seen (Josh Walden quoted in Ratcliffe 2012).

These insights set the context and raise the stakes for the next two chapters of this dissertation. Chapter four investigates litigious conflicts over heirs' property with a focus on two legal case studies from Cainhoy. Chapter five highlights the life histories of residents on Wadmalaw Island, where families rely on a complicated blend of *de jure* and *de facto* processes to establish ownership and use rights to property without clear title. These chapters focus mainly on proving other theoretical points about commons and

enclosures. However, similar to the conflicts over governance and taxation discussed here, landowners involved in these conflicts mobilize the past as a way to understand the forces working against them and to serve as a force motivating resistance.

## **CHAPTER FOUR: LITIGIOUS ENCLOSURES: FROM HEIRS PROPERTY TO FEE SIMPLE PROPERTY**

No more Pinefield Road...All those years my daddy lived on the land, all those things our daddy did for us—it's all gone now...I went to my mama and daddy's grave the other day. Sometimes I go there to talk to them.

My daddy was 100 years old when he died. I said 'Daddy, you lived here all these years and worked so hard. Now it's like we were never here.' I felt like lying down in the grave next to my mama and covering myself up, but then she told me it's going to be all right (Gloria Asby quoted in Bartelme 2001c: 1-6-B).

I never wanted to be anywhere else. I thought I would die here...I feel the loss in my bones. I feel like a part of my body is gone (Johnny Rivers quoted in Bartelme 2000: 1-A).

### **Introduction: Eviction Day**

On September 27, 2001, twenty-five people were evicted from a seventeen-acre parcel of land in Cainhoy, South Carolina. Eviction day was the final act of an eighteen-year court drama whose more remarkable scenes featured: the review of an 1883 freedman's deed, tearful testimonies and altercations between family members, real estate agents besieged by homesteaders, and an act of civil disobedience by the county sheriff (Grabbatin and Stephens 2011). Without grounds or prospects for retaining their land, the evictees formed a prayer circle on eviction day, where they sang hymns and cried together as their mobile homes were hauled away by Berkeley County deputies (Bartelme 2010; Interview: Bartelme, November 2010).

Gloria Asby (quoted above) was one of the evictees. She was born on that land in 1943. She moved away when she married, and after her husband passed away in 1991, she returned home to live near her brother Johnny Rivers, his children, and grandchildren.

Johnny was also born on that land and had never left. During his sixty-nine years on the land he had taken care of the grounds, built a house, paid the property taxes, and oversaw the construction of an eight-home family compound that included five of his children and their families. Because of his continuous care for the property, Johnny was given an additional thirty days to vacate. On eviction day, however, he shared his sister's feelings of loss, which extended beyond material dispossession to include their ancestral, spiritual, and cultural connection to their family's land (Bartelme 2001c, 2001b).

By 2001; the land along Pinefield Drive had been in the Rivers family for one-hundred-and-eighteen-years. During that time it was managed and owned through a variety of property regimes. For the first forty-four years, Hector Rivers was legally recognized the fee simple owner, but when his will was probated in 1927 his son Hector Jr. had already died without leaving a will.

Under these conditions, legal title to the parcel can only be transferred to the next generation through intestate succession. In this case no heirs sought legal action to clear the title through intestate succession, so the parcel remained in the name of Hector Jr. and was managed as a de facto commons through the extralegal practices. This informal property regime persisted until 1983; when the first of two interlocking cases in the Berkeley Court of Common Pleas attracted legal scrutiny of the property. Between 1983 and 2001; the parcel was transformed into a de jure commons called heirs' property and was then was partitioned into lots with clear titles held by individual fee simple owners (Grabbatin and Stephens 2011).

This chapter investigates how the litigious practices of quieting title, partitioning real property, and partition sales erase de facto property regimes and replace them with

the dominant de jure property regime of fee simple land tenure. After a brief discussion of how this chapter fits in to my overall theoretical framework, I offer a detailed account of two cases: *Elizabeth Rivers and Henry Rivers v. Alex Rivers Jr. et al*<sup>5</sup> and *Wigfall v. Mobley et al.*<sup>6</sup>, which resulted in the evictions described above. This account is based on triangulation of data from the Berkeley County Clerk of Court records, Real Property Services Office databases, and articles from Charleston's newspaper, the *Post and Courier*. I conclude the chapter with a discussion that incorporates additional interviews and participant observation to reflect on the broader implications of these litigious and bureaucratic practices.

### **Theoretical Contribution: Neoliberal Tragedies of Incursion**

The previous chapter laid the historical groundwork for understanding the production of heirs' property and illustrated the importance of historical narratives in contemporary land conflicts. In this chapter, I contribute directly to the neoliberal natures literature by illustrating how litigation is an intertwined state-market practice that facilitates the enclosure and privatization of land (Wolford 2005; 2007a, Margulis, McKeon, and Borras 2013; Boamah 2014; Li 2014). In short, my results in this chapter show that property is a "battle ground of contending forces" (Wolf 1972: 201-202), but property law establishes an uneven battleground, where the topography provides an advantage for the dominance of Blackstonian private property (Sparke 1998; Blomley 1994; Blomley 2008a, Graham 2011). In particular, this chapter directly applies to the findings of political ecologists Wendy Wolford and Kathryn Newfont.

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<sup>5</sup> Berkeley County Court of Common Pleas (Case No. 84-CP-08-543)

<sup>6</sup> Berkeley County Court of Common Pleas (Case No. 84-CP-08-543)



Wolford's work on land reform in the Global South identifies that the conflict between neoliberal enclosure and common property hinges on divergent discourses of the relationship between ownership, labor, and value. Wolford argues that two main discourses (neoliberal and populist) can be seen in divergent interpretations of Locke's labor theory of value (Wolford 2007a). Like other scholarship on neoliberal natures, Wolford reminds us that Locke's labor theory of value is foundational to modern neoliberalism because he envisioned a society where the state's main role is to promote the efficient allocation of resources by protecting the property rights of individuals who produce value through their labor (McCarthy and Prudham 2004; Heynen and Robbins 2005; Mansfield 2007; Wolford 2007a). In this interpretation, privatization is the answer to the tragedy of the commons because it makes land visible (Li 2014) to markets where the allocation of resources is based on the relationship between labor and exchange value (Wolford 2007b, a, Borras et al. 2011). This neoliberal interpretation is foundational to American property law, which emphasizes deeds and titles that determine clear individual ownership, making property visible to the market, which is accepted as the best mechanism for allocating the "highest and best use" of property (Freyfogle 2002; Banner 2011; Graham 2011).

Wolford argues that Locke's labor theory of value can also be reinterpreted as a populist vision of property. Specifically, his assertions about the right to secure property rights through labor echoes in agrarian moral economies and land reform movements where direct labor produces not only exchange value, but also subsistence affluence and other forms of use value (Wolford 2005; 2010). In her study of landless peoples movements in Brazil, she shows how these divergent discourses clash in conflicts

between the state and landowners, as well as conflicts between landowners who share a heritage with the same embedded moral economy (Wolford 2005). The previous chapter illustrated the direct implications of Locke's work for South Carolina. Namely that racialized interpretations of his labor theory of value recognized property rights as established through particular kinds of labor (white labor), while devaluing others (black labor) (Locke [1669] 2008; Flynn 1983; Fiege 2012). These divergent interpretations of the labor theory of value, both neoliberal and populist, are pitted against one another in the litigious transformations of heirs' property.

Both Wolford and Newfont show how litigious and bureaucratic practices place these competing discourses on uneven ground. However, Newfont's study of the Blue Ridge commons provides an example from the Global North, where distinctly neoliberal traditions of property law facilitate the alienability of resources, so they can be transferred, acquired, compensated for, and exchanged as a commodity between fee simple owners (Freyfogle 2002; Banner 2011). However, her example also shows how even de jure forms of tenancy in common (those recognized by law) can also remove de facto practices that are crucial for avoiding tragedy (Newfont 2012). De facto property regimes incorporate the flexibility to allocate and exclude ownership rights to protect a common good as defined by a group of users who share a common moral economy. The creation of de jure commons, however, can lead to a *tragedy of incursion*: actions by the state that disrupt or undermine common property regimes (Pinkerton 1987). In the case of heirs' property, litigious and bureaucratic practices cause a tragedy of incursion because they extend rights to those outside of the moral economy and empower discourses by new owners who see the world through neoliberal eyes.

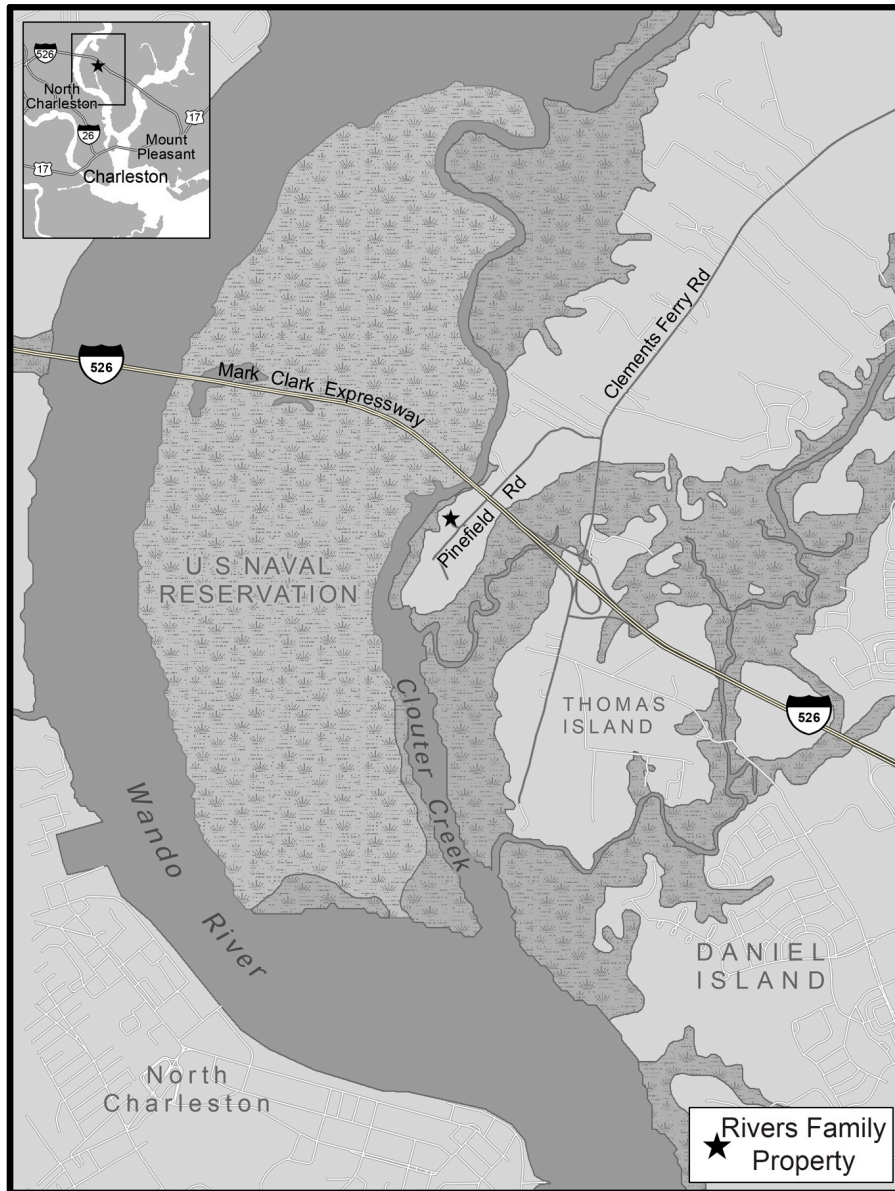
These insights in the process of enclosure are crucial for understanding the court cases described below. *First*, these cases show how quieting title, partition, and sales produce fee simple property out of family land. *Second*, the conflicts in each stage of this litigious process highlight divergent interpretations of the labor theory of value among lawyers, judges, and heirs. *Third*, while these cases show there are opportunities for moral economies to be inscribed in de jure property, the transformation of a de facto commons (family property) into a de jure commons (heirs' property) facilitates privatization by making these parcels vulnerable to tragedies of incursion.

### **Background: Cainhoy**

The property involved in the cases below is located on the tip of the Cainhoy peninsula in the East Cooper Area of Berkeley County, South Carolina (see Figure 4.1). Around 1740; Cainhoy became Charleston's primary brick supplier by utilizing the rich clay deposits along the Wando River. After the Civil War, the vibrant river economy declined. After a period of sharecropping, Cainhoy became a mixture of small African American truck farms, a few large white owned farms and timber tracts, and a cattle ranch owned by Harry Guggenheim (Frazier 2011). While resort style development disrupted African American landownership on the sea islands of South Carolina, Cainhoy remained a rural, mostly African American peninsula with little value for tourism development.

### FIGURE 4.1: Rivers Family Property

Locator map showing Pinefield Road and Hector Lane on the Cainhoy Peninsula where the property in these legal case studies is located (Cartography by Jeffrey E. Levy).



In the late 1980s, however, road and utility construction literally paved the way for residential and commercial development in the East Cooper area. Rising property values and taxes precipitated a decline in African American landownership (National Park Service 2005). In 1992; the multimillion-dollar Mark Clark Expressway connected North Charleston and West Ashley to Mount Pleasant and the State Ports Authority. Road improvements and previously unavailable water and sewer services extended to Cainhoy, property taxes soared, and the city of Charleston annexed thousands of acres, zoning them for industrial and commercial uses (Bartelme 2001a-b, Sinkler 2005a).

**Case Study #1: *Elizabeth Rivers and Henry Rivers v. Alex Rivers Jr. et al.***

Got five girls and two boys who were born on this land and who grew up here. It's the only home they know. I kept the long grass cut, kept the high bushes cut, and the longest I was away from this property in 69 years was nine days when I was in the hospital. Never taken a vacation out of South Carolina, just stayed on the land. I've paid taxes since my father died (in 1972) without any help –the last tax bill was \$1,300 Johnny Rivers (Johnny Rivers quoted in Bartelme 2001b: 1-A).

The Berkeley County deed books and plats show that the Rivers family acquired parcel *271-00-01-1051* on the March 8; 1883. On that day, a freedman named Hector Rivers purchased fifty-four acres of highland and fifty-seven acres of marshland along Clouter Creek in Cainhoy South Carolina.<sup>7</sup> The county records also show that when Hector's will was probated in 1927; his son, Hector Jr., retained 5/6 of the parcel and the remaining 1/6 passed to his son Samuel Rivers.<sup>8</sup> Though he died in the 1920s, before his father's will was probated, the title remained in Hector Jr.'s name, while his descendants paid the

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<sup>7</sup> Charleston County Deed Book K-19 at 280; Berkeley County Deed Book A-6 at 358.

<sup>8</sup> Complaint at Page 3; *Wigfall* (No. 94-CP-08-1497).

property taxes. In short, the property was being managed and inheritance orchestrated through the families living there, but these actions were not recorded in the county records and irrelevant to its legal status.

In South Carolina, if a will is not probated within ten years of a landowner's death, legal inheritance is determined through intestate succession: a state formula that relies on records of kinship to determine owners and interests.<sup>9</sup> However, without legal action to identify the heirs and their interests, title remains clouded because the deed still shows the name of a deceased owner and the identity of heirs remains unclear. As long as the property taxes are paid and no heir files suit to quiet the title, the property remains in this legal limbo and can be managed through extralegal practices. Deputy Charleston County administrator Walt Martin illustrates the county's limited interest and concern for these parcels. "We know of people who have been dead for 70 or 80 years, and according to our records, they're still paying their taxes" (Bartelme 2000: 9-A).

When asked, nearly all of the landowners, lawyers, and activists I interviewed for this project suggested that will making in the African American community is so uncommon because of racial inequalities, which led to illiteracy and distrust of courts and local government. African American respondents were more likely to also mention superstitions about "wills hastening death" and their faith in extralegal practices of oral will making for preserving land (Interviews: King, November 2011; Septima, February 2012).

Former Director of Black Land Services offered the most holistic explanation of this reluctance towards will making. He acknowledged that these extralegal practices

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<sup>9</sup> South Carolina Code of Laws 62.2 Part 1

developed as a response to structural inequality, but also argued that the clouded titles removed these parcels from circuits of capital, while kinship-based management protected these parcels from legal scrutiny. Further, while clouded title prevents heirs from using their land as an asset, it also protected them from mortgages and other loans that were common vehicles of dispossession during the Jim Crow era. Did it work? he asked me to “look around and you’ll see that lots of people still own heirs’ property” (Interview: Black Land Services Director, November 2011).

The Black Land Services Director used the phrase heirs’ property to describe these parcels, a phrase that is often used to refer to all property that has passed intestate. Inspired by my experiences on Wadmalaw Island, I will use the phrase family property to refer to parcels where the landowner has died without a will and the title remains clouded. Using this distinction, the Rivers family property did not become heirs’ property until 1983; when the case of *Elizabeth Rivers and Henry Rivers v. Alex Rivers Jr. et al* uncovered a complicated history of extralegal practices during the fifty-six years since the title was last conveyed. In 1983; plaintiffs in *Elizabeth Rivers and Henry Rivers v. Alex Rivers Jr. et al* began their case with a Quiet Title Action to determine the intestate heirs for parcel 271-00-01-1051. They presented death certificates showing that Hector Rivers. Jr., two of his wives, his eight children, and two of his grandchildren had all died intestate. Birth certificates, marriage certificates, and adoption papers were used to establish inheritance rights for twenty-two living heirs. One additional heir was added because, though he was born out of wedlock, the other heirs established him as the

biological son of another deceased intestate heir and agreed to include him in their petition to determine heirs.<sup>10</sup>

With twenty-two legally defined heirs identified, the next step in establishing heirs' property rights was to determine their interests based on intestate succession. The Berkeley County courts established that the two plaintiffs in the case, Elizabeth and Henry, should receive a 33.745% and 33.332% interest respectively. Their high percentage of interest reflected their proximity to the roots of the family tree. Henry was the only one of Hector Jr.'s eight children still living and Elizabeth was only living widow of the remaining children's spouses. All of the other heirs were either the children or grandchildren of the generation Elizabeth and Henry represented. Both of them were able to further increase their percentage of ownership by reaching agreement with five heirs who were no longer living in the area, and thus willing to part with their interest in the property.<sup>11</sup>

At this stage of its legal transformation, parcel 271-00-01-1051 became heirs' property. The title was no longer clouded, because the identity of the heirs and the interests among them were determined. However, the parcel still could not be used as collateral or conveyed because the heirs still held an undivided interest in the property as tenants in common. This form of collective ownership gives all heirs, no matter how small their percentage of interest, an equal legal right to the enjoyment, improvements, and responsibilities of the entire parcel.

With the number of heirs reduced to eighteen and a commanding interest in the property between them (67.077%), the plaintiffs filed a Partition Action to gain clear title

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<sup>10</sup> Complaint at Page 3-6; *Wigfall* (No. 94-CP-08-1497).

<sup>11</sup> Complaint at Page 6-7; *Wigfall* (No. 94-CP-08-1497).



to a divided portion of the family parcel. The plaintiffs were successful, and in 1987 the parcel was divided into seven lots, one for each of the living branches of Hector Jr.'s family tree.<sup>12</sup> Title to parcels three through seven was fully cleared, partitioned, and transferred to Elizabeth and Henry Rivers as fee simple property. Parcels one and two kept their status as heirs' property, belonging to the descendants of David and Ida Heyward (56.25%), Alex Rivers (28.12%), and Thomas Rivers (15.63%). The land-use on these parcels did not change much. The next round of litigation on these parcels resulted in more dramatic effects.

**Case Study #2: *Wigfall v. Mobley et al.***

On September 14; 1994 William Peagler filed a Quiet Title and Partition Action on behalf of Blondell Rivers Wigfall, a descendant of Alex Rivers. The quiet title action relied on the outcome of *Elizabeth Rivers and Henry Rivers v. Alex Rivers Jr. et al.*, but added two additional heirs named in the will of Alex Rivers Jr.'s who had died while the previous case was being tried. The partition action assigned an equal interest among all eight heirs of Alex Rivers and included a plat for how to equitably partition the parcel among them. It also called for the eviction of twenty-four non-heirs living on the property because even though one heir, Johnny Rivers, had permitted his children to place mobile homes on the property it was "without the permission of the Plaintiff and the other defendants having an interest to the subject property."<sup>13</sup>

On October 26; 1994; attorney Ruth Cupp filed an *Answer and Counterclaim* on behalf of Johnny Rivers, Blondell's brother and tenant in common. The answer

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<sup>12</sup> Berkeley County Plat, Cabinet F at Page 125.

<sup>13</sup> Complaint at Pages 10-11; *Wigfall* (No. 94-CP-08-1497).

legitimated the determination of heirs,<sup>14</sup> but the counterclaim, took issue with division of interests and partition plat.<sup>15</sup> Johnny’s attorney claimed that his labor, funds, and commitment to the property entitled him to “a greater interest in the land than the other heirs”<sup>16</sup> and requested that the equitable partition include “two acres surrounding his residence” and “other and further relief as this Court may deem just and equitable.”<sup>17</sup>

Despite attempts at family negotiation, both with and without lawyers present, *Wigfall v. Mobley et al.* dragged on. In 1997; Peagler wrote a letter to Judge McKellar stating that “[we] are currently trying to buy out the minor interests in the property in order to consent to partition...I would like to request this matter be continued and it should be resolved by next month.”<sup>18</sup> The Alex Rivers family branch (which included Blondell, Johnny, and Gloria) was assigned a 28.12% of the remaining two parcels and consisted of nine heirs. Peagler argued that it would be impossible to partition the property and equitably award access to the water, road, and leave enough room to comply with county well and septic spacing. He then stated the desire of “various defendants,” for a court ordered sale, an outcome endorsed by a 1999 *Consent Order for Partition Sale*.<sup>19</sup>

In response, Cupp and defense attorney Mark Lund argued that their clients were “being told they can’t live on the property unless they buy it for a price they can’t afford” (Bartelme 2001b, 9-A) and that the funds from a partition sale would not be enough for

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<sup>14</sup> Answer and Counterclaim at ¶ 2; *Wigfall* (No. 94-CP-08-1497).

<sup>15</sup> Answer and Counterclaim at ¶ 5; *Wigfall* (No. 94-CP-08-1497).

<sup>16</sup> Answer and Counterclaim at ¶ 10; *Wigfall* (No. 94-CP-08-1497).

<sup>17</sup> Answer and Counterclaim at ¶ 11; *Wigfall* (No. 94-CP-08-1497).

<sup>18</sup> Letter from William W. Peagler III to Judge McKellar dated 9 January 1997; *Wigfall* (No. 94-CP-08-1497).

<sup>19</sup> Pretrial Brief of Defendants and Plaintiff, *Wigfall* (No. 94-CP-08-1497).

suitable housing in the area.<sup>20</sup> These arguments did not stop the partition sale and the parcel was shown to potential buyers.

In September 2000; a letter from real estate agent Caroline Hall to Mike Szews of Agent Owned Premiere Real Estate described how gentlemen living on the land were “staring...coming at us very quickly...[and] yelling” when she took clients to see the land. Apparently this disruption did not deter her client. Hall stated that she did “not feel safe to walk the property...[and] would hate to have [her] client miss out on the possibility of presenting an offer.”<sup>21</sup> Peagler filed a restraining order on September 13; 2000 to keep “these certain defendants and/or invitees from thwarting the court’s attempts to sell the property.”<sup>22</sup> One of Johnny’s daughters told reporters they resisted because they could not afford to move elsewhere (Bartelme 2001b: 9-A).

In December of 2000; the Berkeley County Master-in-Equity issued an order finding developer Woody Smith’s offer of \$910,000 “fair and reasonable” and ordered the heirs to sell the property to him.<sup>23</sup> The order also requested all tenants to vacate within 60 days, except for Johnny Rivers, who was given thirty days after the closing to vacate the premises.<sup>24</sup> Dissatisfied with the outcome, Johnny tried one last time to save his property, filing a *Motion for Rehearing*, claiming his attorney misrepresented him and

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<sup>20</sup> Order Granting Authority To Consummate Sale at Findings and Considerations at ¶ 4; *Wigfall* (No. 94-CP-08-1497).

<sup>21</sup> Letter from Carolina Hall to Mike Szews dated 11 September 2000; *Wigfall* (No. 94-CP-08-1497).

<sup>22</sup> Order Granting Authority To Consummate Sale at Findings and Considerations ¶ 5; *Wigfall* (No. 94-CP-08-1497).

<sup>23</sup> Order Granting Authority To Consummate Sale at Findings and Considerations ¶ 2-4; *Wigfall* (No. 94-CP-08-1497).

<sup>24</sup> Order Granting Authority To Consummate Sale at ¶ 6-7; *Wigfall* (No. 94-CP-08-1497).

restating the importance of his emotional and economic attachment to the land.<sup>25</sup> With their legal hopes fading, Johnny's daughter, Johnnie Mae began to worry about her father. "He nurtured this land all his life...I know my father and if they take him off, I think it will kill him, I really do" (quoted in Bartelme 2000: 9-A).

Peagler responded with a litany of legal precedents and quotations from previous orders to show that Johnny's arguments were "directly contrary to established legal principles" and "nothing more than a dilatory tactic designed to prevent the fair and just resolution of this case (which is already more than six years old)."<sup>26</sup> Peagler also filed a motion to hold the Berkeley County Sheriff in contempt of court since he had not evicted the non-heir residents. On September 27, 2001; the eviction order was carried out. Twenty-five residents and six mobile homes were removed from the family property. Lieutenant Jimmy Mixon described it as "A sad day," and told reporters it was the largest eviction he had to serve in his nine years working for the county (Bartelme 2001c: 1-B).

The final document in the case files for *Wigfall v. Mobley* is a *Consent Order* conveying fee simple ownership to Woodie Smith and explaining the equitable distribution of the sale proceeds. Before the proceeds could be distributed among the sixteen heirs, attorney's fees were deducted.<sup>27</sup> Peagler, the plaintiff's attorney, received \$13,115.70 reimbursement and 10% of the gross sale price (\$91,000.00). The three defense attorneys each received 5% of the gross sale price (\$45,500 each). A Guardian

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<sup>25</sup> Plaintiff's Return To Defendant Rivers' Motion For Rehearing And To Alter And Amend Order Granting Authority To Consummate Sale at Section I, *Wigfall* (No. 94-CP-08-1497).

<sup>26</sup> Plaintiff's Return To Defendant Rivers' Motion For Rehearing And To Alter And Amend Order Granting Authority To Consummate Sale at Section VII, *Wigfall* (No. 94-CP-08-1497).

<sup>27</sup> Consent Order at ¶ 1-2; *Wigfall* (No. 94-CP-08-1497).

Ad Litem involved in the case received \$1,500.00 in attorney's fees.<sup>28</sup> That left \$667, 884.30 to be divided among the sixteen heirs, who each held a different percentage of interest based on their lineage.<sup>29</sup> Blondell, Johnny, and Gloria all received 3.515% of the sale price, after attorney's fees (\$23,476.13 each).<sup>30</sup>

### **Discussion: Litigious Transformations**

The detailed account above shows how litigation can transform the de facto commons of family property into the de jure commons of heirs' property, and ultimately into fee simple property. This discussion explains out how this litigious transformation facilitates a tragedy of incursion, where the state disrupts extralegal property claims based on the kin-based moral economy and empowers neoliberal property claims. I will also provide examples from these cases to show how practices associated with the moral economy of de facto property can be inscribed in de jure regimes.

#### *Heirs' Property: Determining Heirs*

Quieting title replaces the de facto commons of family property with the de jure commons of heirs' property, where heirs are determined through laws of intestate succession. Determining heirs was the least contentious part of the cases above because both the de facto and de jure regime of identifying family members are largely congruent. They do diverge from one another in terms of the burden of proof required to make a

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<sup>28</sup> Consent Order at ¶ 5-7; *Wigfall* (No. 94-CP-08-1497).

<sup>29</sup> Descendants of David and Ida Heyward held a 56.25% interest. The descendants of Alex Rivers held a 28.12%. The descendants of Thomas Rivers held a 15.63%.

<sup>30</sup> Consent Order at ¶ 2-3; *Wigfall* (No. 94-CP-08-1497).

claim of kinship and the extension of kinship to heirs who are not biologically related to the intestate owner.

Making an heirs' property claim relies on marriage licenses or certificates of birth and adoption in order to prove kinship. In communities where will making is not common, these types of documentation are hard to come by. In the absence of these forms of documentation, lawyers at the Center for Heirs' Property Preservation (CHPP) and the Heirs' Property Law Center have gotten used to families bringing them bibles and oral histories recorded at family reunions as a starting point for making a legally legible family tree. Those heirs whose kinship claims are based on the extension of rights through cohabitation or caregiving on family property can be erased through this process. Heirs whose claims rest on these extralegal practices are dependent on agreement between all heirs whose kinship claims can be established.

For example, on Wadmalaw Island I interviewed a woman named Rosa, whose claim to her Wadmalaw Island parcel was based on a history of residency, grounds keeping, responsibility for taxes, caregiving for non-blood relatives who could claim intestate property rights, and an oral will recognized by other family members. Due to a combination of clerical errors and financial hardship, Rosa was unable to pay the property taxes in 2009. So in 2010; Charleston County sold it at a delinquent tax auction transforming the family property directly into fee simple property (Interview: Rosa, 28 October 2012).

Faced with eviction, Rosa wanted to file legal action to determine her status as an heir, which she hoped would give her legal grounds to challenge the sale or at the very least collect her interest of the proceeds from the tax sale so she could relocate. I helped

her make a family tree and took her to an appointment with a lawyer to review her case. However, when she showed her family tree to a lawyer, he informed her that since she was never legally adopted, she had no legal right to pursue such actions and in fact was not an heir.

Rosa refused to accept the lawyer's assessment, countering with numerous descriptions of rearing, residence, and caregiving to establish herself as an heir. He explained that her only legal recourse was for her brother, the biological son of the people who raised her, who was two generations removed from the last fee simple owner, to establish his status as an intestate heir at which time he can vouch for her as kin and, if willing, transfer a portion of his interest to her. So far, the legally legible family members are unwilling to undertake this time consuming and potentially expensive process (Interview: Rosa, November 2012).

In the *Elizabeth Rivers and Henry Rivers v. Alex Rivers Jr. et al.*, the heirs did extend kinship beyond the heirs who were legally legible through standard documentation. They argued that one rightful heir was left out of the intestate succession process because he was born out of wedlock. The details of family negotiations leading up to this addition are not documented in the case files. However, I was able to gain further insight into a similar type of decision from a former heirs' property owner named Michelle.

In Michelle's case, an uncle living on the property was not eligible for rights of intestate succession because his branch of the family had already partitioned and sold their portion of the property. So Michelle's family allowed him to build a house on their family property. When rising property values and taxes motivated the family to sell the

land, they began the process of quieting title. Before they filed a *Quiet Title Action*, the family met out of court and agreed that their uncle should be included and his percentage of interest taken from the main heirs. The judge agreed because the intestate heirs unanimously decided on this deviation from their legal obligation (Interview: Michelle, February 2012).

In *Wigfall v. Mobley et al.*, the original *Quiet Title Action* requested that twenty-four residents be evicted and six mobile homes removed from the property. Out of the six mobile homes listed for immediate eviction, five were owned by Johnny's biological or adopted children and one was owned by someone not biologically or legally related to the Rivers family. Though Johnny's children were part of the legally legible family tree, their intestate rights were not established because their father was still living. When Johnny extended use rights to his children, he was acting on the extralegal authority of family property, which was established through his residency, labor, and fulfillment of responsibilities. In 1971; before his father died, Alex told Johnny, "Always pay your taxes, and you'll keep your land" (Bartelme 2002: 5-B).

Now the elder in residence, Johnny felt he not only had a responsibility to protect the parcel from tax delinquency, but also to make land-use decisions (Bartelme 2001c). However, as one of many tenants in common, Johnny shared the rights to determine land use decisions. All the plaintiff's attorney had to prove was that Johnny had permitted his children to place mobile homes on the property "without the permission of the Plaintiff and the other defendants."<sup>31</sup> Without legal grounds for remaining on the property, the

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<sup>31</sup> Complaint at Pages 10-13; *Wigfall* (No. 94-CP-08-1497).



non-heirs used acts of civil disobedience and relied on the reluctance of the county sheriff to delay their eviction.

### *Heirs' Property: Determining Interests*

The process of quieting title also involves assigning interests among family members based on their place in the family tree. When interests are assigned to heirs' property owners, this process recognizes the tradition of providing older family members with a higher degree of decision-making power. Henry and Elizabeth were able to establish a commanding interest in the property because of their generational standing as elders closer to the roots of the family tree. However, as *Wigfall v. Mobley et al.* illustrates, quantifying ownership interests through kinship can create conflicts among members of the same generation because the legal practice of determining and partitioning interests erases labor, residency, and the fulfillment of responsibilities, which hold a great deal of weight for defining land use decision making on family property. When Johnny challenged the courts determination of interest and request for partition by arguing that his labor entitled him to a greater interest and additional compensation the Plaintiff's lawyer was able to strike down those claims by stating they were "directly contrary to established legal principles."<sup>32</sup>

I interviewed a woman named Ella whose family could no longer afford the property taxes on land where only one heir lived. The family was faced with selling or losing the land to a tax auction. Through a successful family negotiation, the heirs went

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<sup>32</sup> Plaintiff's Return To Defendant Rivers' Motion For Rehearing And To Alter And Amend Order Granting Authority To Consummate Sale at Section VII, *Wigfall* (No. 94-CP-08-1497).

into court with a Quiet Title Action that assigned a greater interest to those who had paid the property taxes and even adding a family friend who had built a house there (Interview: Ella, March 2012). In *Wigfall v. Mobley et al.*, Johnny received no such assistance from his siblings, lawyers, or the court to secure an additional interest. The only concession of greater interest he did receive as reimbursement for the property taxes he paid while the case was open.<sup>33</sup>

#### *Fee Simple Property: Partitions*

Once a Quiet Title Action establishes the parcel as heirs' property, all heirs still hold undivided rights to use, enjoy, and benefit from improvements, and share responsibility for the property as tenants in common. This arrangement leaves these parcels vulnerable to a tragedy of incursion because any single heir, no matter how small their interest, can file an action to partition their interest or force a sale (Rivers 2007). In cases with a small number of heirs, family agreement, or a large acreage to divide among legal heirs partition actions can protect the property from this tragedy. In cases with a large number of heirs, family conflict, or small acreage, judges typically order partition sales, which lead to the dispossession of land from resident heirs and deflated sale proceeds for all heirs.

By quieting title when they did, Elizabeth and Henry held a commanding interest because they were a full generation closer to the last fee simple owner. They also bought out the rights of five nephews, nieces, and grandchildren, to consolidate additional branches of intestate succession to give them fee simple rights to five out of the seven

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<sup>33</sup> Order Granting Authority To Consummate Sale at ¶ 6-7; *Wigfall* (No. 94-CP-08-1497).

lots. By partitioning their interest, they removed the vulnerability to a tragedy of incursion and secured fee simple rights. Since partition, Elizabeth and Henry Rivers parcels have passed testate to a new generation of heirs, who have subdivided the acreage into fourteen lots. Heirs sold seven of the lots for prices ranging from \$60,000 to \$125,000. The other seven were conveyed within the kinship-network for prices ranging from \$0 to \$10<sup>34</sup>.

The CHPP, Heirs' Property Law Center, Penn Center, and Gullah-Geechee Sea Island Coalition have all highlighted the potential benefits of quieting title and partitioning property under the right circumstances. They argue that this process not only removes the vulnerability to partition sales, but it can also be a powerful force in poverty alleviation and can reduce pressures of gentrification. CHPP emphasizes how heirs have secured loans for home repairs to dramatically improve their quality of life (CHPP 2011a, 2012). These organizations have also highlighted how quieting title makes these properties eligible for easements and grants for timber as well as non-timber based land uses that can lower the property tax burden (Fanslow 1993; Donnan , Wyckoff-Baird 2005; CHPP 2013b, Charleston Regional Business Journal Staff 2013).

In the focus group moderated by Queen Quet, heirs discussed Limited Liability Corporations (LLCs) as one of the best possible solutions for relieving the economic and legal pressures of dispossession (St. Helena Island Focus Group, May 2012). During my fieldwork I encountered two families who had established an LLC with a board of heirs who collectively make land-use decisions. One family in East Cooper has partitioned their family property into small lots for each resident heir and one large lot adjacent to a

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<sup>34</sup> Berkeley County Real Property Office Online Records last accessed on March 6; 2015.

busy state highway where they are leasing a several buildings to businesses. So far, they are generating enough revenue to keep up with the property taxes, loan payments for the new buildings, and are starting to turn a little profit (Land Preservation Workshop, September 2012).

On Saint Helena Island, a group of family members pooled their resources and purchased three hundred and twenty-eight acres of land for a hunting club in 1910. In 1996; the descendants of “the founders” quieted title, formed a non-profit Limited Liability Corporation (LLC), and obtained an easement from the Beaufort County Open Land Trust in order to protect the property from legal dispossession and rising property tax pressures (Penn Center 1986; Founders of Lands End Woodland 1920). The property is used for hunting, fishing, beach access, and family reunions. Each year they hold a festival, which raises enough money to pay the property taxes (see Figure 4.2) (Lands End Woodland 2007).

#### **FIGURE 4.2: Lands End Woodland River Festival**

This festival on Saint Helena Island provides an opportunity to celebrate the preservation of this waterfront parcel and educate landowners about the importance of land preservation. During the festival, ancestors of the founders of Lands End Woodland speak about the historical and contemporary importance of the property (photo by the author).



### *Fee Simple Property: Partition Sales*

In cases with a large number of heirs, small amount of acreage, and family conflict, these parcels are vulnerable to a tragedy of incursion that ends with partition sales. Journalists and social scientists have described instances where developers, familiar with the vulnerability of heirs' property, buy out the interest or convince a single heir to force a partition sale so they can purchase valuable waterfront property in the Lowcountry (Reed 1972; Sanders, Brooks, and Pennick 1980; Jones-Jackson 1987; Carawan and Carawan [1967] 1989; Smith 1991; Danielson 1995; Lewan and Barclay 2001b, Barton 2011).

However, it is not necessary for developers to be directly involved in these cases in order to benefit because property law facilitates the privatization and commodification of land, and in the case of heirs' property, at a deflated price. Legal scholars have referred to this process as a "double discount" (Mitchell, Malpezzi, and Green 2010) and have raised concerns about the "inequity in equity" (Rivers 2007) that results from equitable partition of sale proceeds, which can disappoint even heirs who began legal action in order to cash in on their asset (Pridemore 2009; Rivers and Stephens 2009).

In the first case, the Master-in-Equity felt comfortable dividing the one hundred and eleven acres of family property into seven lots, one for each living branch of Hector Rivers Jr.'s family tree. In *Wigfall v. Mobley et al.*, however, the remaining two lots of heirs' property had to be partitioned between seventeen people, all of whom were the grandchildren and great grandchildren of Hector Rivers Jr. Since the interests assigned to tenants in common have no legal spatial context on the property, the courts must decide how to equitably divide land among heirs who may already claim rights to specific areas based on family property.

Johnny requested that he receive “two acres surrounding his residence,” an outcome that would protect his home and the family compound around it where both heirs and non-heirs resided.<sup>35</sup> However, the Master-In-Equity agreed with Blondell’s lawyers that there was insufficient acreage for an equitable partition because of the need to provide water and road access, as well as spacing for wells and septic tanks. Instead, he ordered a partition sale because it allowed them to avoid the complications of an equitable spatial division by quantifying the value of the land and equitably dividing the proceeds among the heirs.

Johnny told reporters that the non-resident heirs who lived in other parts of the state, Georgia, Illinois, and New York had not helped him with the property taxes or kept up with the grounds, but they jumped on the legal bandwagon. “A lot of them who want to sell don’t live here. They know what they’re doing to me, but they don’t care. They figure they can get some money.” (Bartelme 2001b: 9-A).

However, as the division of proceeds indicated, when fees and court awarded interests came out lawyers ended up with 26.44% of the sale price and Johnny was still responsible for his defense attorney’s fees. Further, as Johnny’s lawyer argued, the proceeds of the sale were not enough for the defendants to find housing in the area. Johnny left Cainhoy and went to live with his son in North Charleston. His sister, Gloria Rivers negotiated with a neighbor and was able to move her trailer onto his family property (Interviews: Bartelme, November 2010; Frazier 2010).

Cainhoy community leader Fred Lincoln argued that in this case, the judge failed to look out for the best interest of the heirs because he ordered the property be sold to a

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<sup>35</sup> Answer and Counterclaim at ¶ 11; *Wigfall* (No. 94-CP-08-1497).

specific person instead of sold on the market by the family. Even those who wanted to sell the land felt their compensation was far from equitable. The court ruling did not give them the right to subdivide or hold out for a higher bid. The judge locked in a risk-affected price and sold it to a specific buyer (Bartelme 2010). The land was only appraised at \$910,000 because of the risk involved in buying a parcel of heirs' property (Bartelme 2000; 5-B, Interview: Frazier 2010).

However, after the title was cleared in court and a partition ordered, that risk was removed, increasing its value. The judge considered Woodie Smith's \$910,000 offer to be fair market value, but eight months after the evictions from Pinefield Drive, the land was divided into eight "Unbelievably Beautiful High Wooded Lots Close to Charleston...Ancient Oaks and Deep Water Make This Perfect" with a total listing price of \$3,000,000 (Bartelme 2002; 1-B). In short, the court-ordered sale removed the legal complications that posed risk for buyers, while simultaneously locking in a risk-affected sale price for Smith (see Figure 4.3).

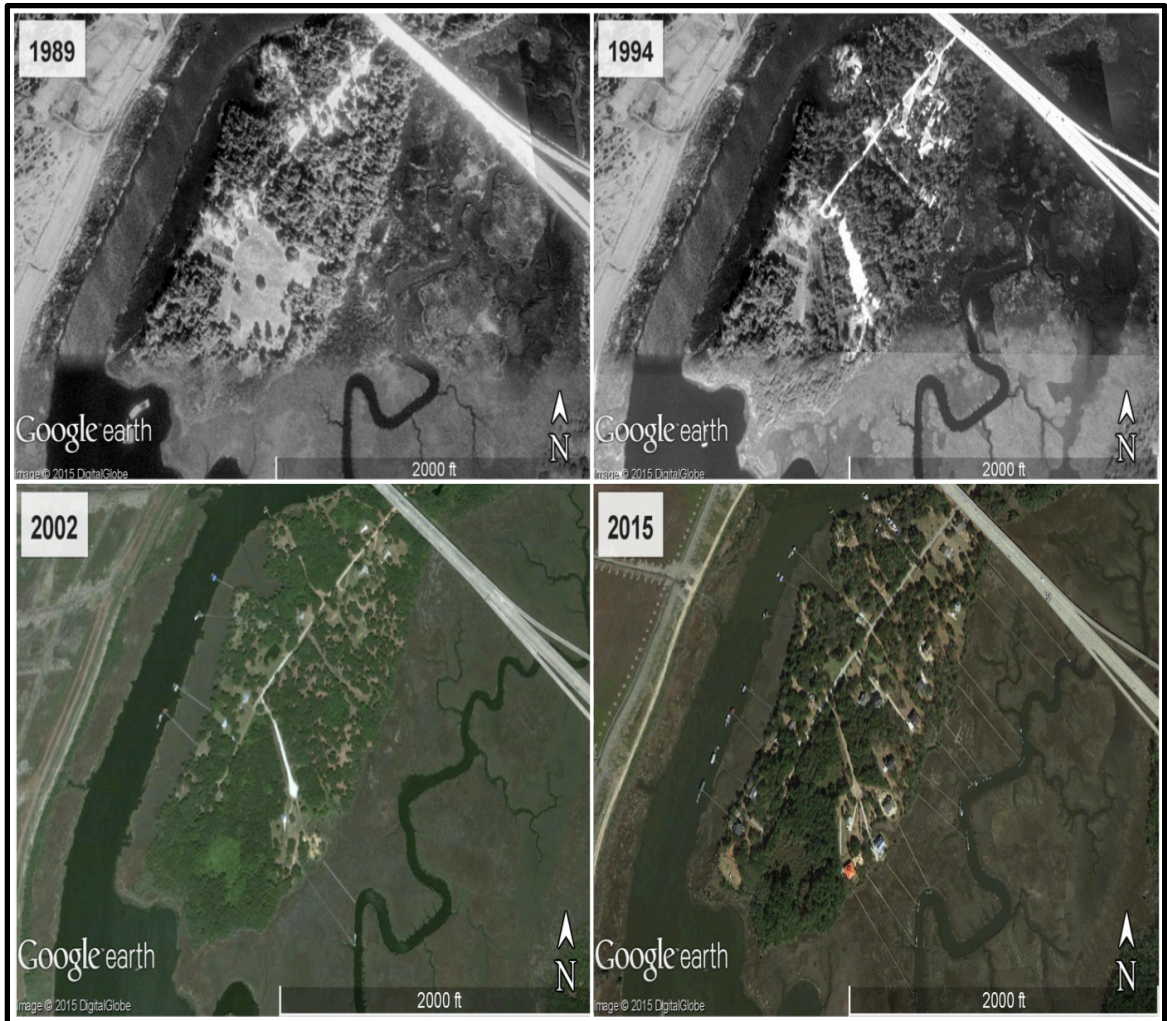
### **Conclusion: Solving the Heirs' Property Problem**

From the cases above it is easy to see why the American Bar Association's Property Preservation Task Force called heirs' property "the worst problem you never heard of" (Persky 2009: 1). In South Carolina, groups like CHPP, Heirs' Property Law Center, Penn Center, and Gullah-Geechee Sea Island Coalition have encouraged owners with a small number of heirs, large acreage, and family agreement to go through the process of quieting title and partitioning property. These parcels are still subject to the pressures of



### FIGURE 4.3: Pinefield Road Landscape Change (1989 – 2015)

Aerial images of Cainhoy Peninsula with an emphasis on the property involved in the cases described in this chapter (Google Earth map created by author).



coastal gentrification, but with clear title they have the ability to perpetuate family property through legally secure practices. They can convey ownership through deeds for “One Dollar, love and affection,” build family compounds, as well as share wooded areas and water access across parcel boundaries. CHPP also holds regular will-making clinics in African American communities in order to interrupt the habits of intestate succession and encourage landowners to inscribe their final wishes in legally legible documents (Ratcliffe 2012; CHPP 2013c). However, these organizations are looking to do more.

We’re looking for something that would favor the person who has been on the land all these years, not someone who comes out of the blue who wants a piece and runs everyone off (Cainhoy community leader Fred Lincoln in Bartelme 2002: 9-A).

I asked the Supervising Attorney at CHPP about the possibility of a resident heir using adverse possession to advance property claims against non-resident heirs. The legal briefs he gave me, however, illustrate that the tenants in common relationship makes it nearly impossible to make such a claim because possession falls under the undivided rights, use, improvements, and responsibilities shared by cotenants.<sup>36</sup> To claim rights of adverse possession an heir has to prove that a presumed ownership claim has been in effect for twenty-years.<sup>37</sup> Claims of residency, labor, and responsibility are typically not sufficient to claim presumed ownership by a single heir over others. The South Carolina Supreme Court case of *Robin v. the Estate of Harris* is a recent and notable exception.

In that case the court determined that twenty-acres of land bought by freedman Simeon B. Pinckney was partitioned by the widow of Simeon Pinckney in 1946. They

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<sup>36</sup> Woods v. Bivens, 292 S.C. 76; 79 (SC 1987).

<sup>37</sup> SC Code 15-67-210

determined that Simeon was not a biological child of Simeon B., but one of many children raised on the property that could not claim intestate rights. However, since Charleston County had mistaken the identities of Simeon and Simeon B. and issued deeds to Ellis and Herbert Pinckney in 1946; and the other heirs did not address the issue until 2003; the burden of presumed deed and statute of limitations had been met for an adverse possession claim (Behre 2011).

Given the limitations of adverse possession, additional legal reforms are being pursued. In 2006, South Carolina gave heirs rights of first refusal, which gives families forty-five days to buy out the interest of heirs who want to force a court ordered sale. However, in communities that are typically land rich, but cash poor this amounts to exactly what Johnny's lawyers argued in his case, resident heirs who are evicted from the family property unless they "buy it for a price they can't afford" (Bartelme 2001b: 9-A). Further, this law does nothing to avoid a tragedy of incursion because it simply "shifts the burden from the family members who want a buyout to the family members who want to keep the land—and their family heritage—intact" (Brack 2006). Neither rights of first refusal or adverse possession are a sufficient or practical way to legally inscribe the practices of family property, however, because neither addresses the divergent perspectives of value that underlie heirs' property conflicts.

The difference—the major difference—between the way the law looks at land and the way heirs' property interest holders look at land that they have an interest in, is that the law wants the property title cleared for one reason: so that the land can be bought and sold in the marketplace because they don't want any question as to who owns real property (attorney Willie B. Heyward at the Land Preservation Workshop, September 2012).

As Heyward points out, the cases above illustrate, litigation is very effective in facilitating the transformation of family property into a private and fully commodified

form of fee simple property. His claim that this neoliberal vision of land is in direct opposition to all heirs' property owners is overstated. Though the heirs' property owners in attendance at the workshop did nod and sound their agreement, clearly, some heirs' property owners do see land as a commodity and given the right circumstances can benefit from doing so.

The narrative of conflicting neoliberal and moral economy based visions is a powerful one in the movement to protect heirs' property rights and is useful for understanding how the legal process amplifies the claims of some heirs over others (Campbell 1993; Goodwine 1998a, Quet 2010). Legal scholar Thomas Mitchell has advocated for expanding rights of adverse possession for resident heirs' property owners and wants to introduce non-economic variables for measuring value. He was told by a law school dean that his position on heirs' property is "fatally flawed" because:

Black heir property owners are at best subsistence farmers who are unable to use their property productively. Forcing the sale of their property at public auctions enables wealthy individuals or corporations to purchase this property...[and] make financial investments that assure that the property is used for its highest and best use (quoted in Mitchell 2005: 12).

This quote helps clarify the deep neoliberal roots of partition sale orders. In the *Wigfall* case, a partition sale was intended as the most equitable way to partition the property among the heirs. However, the counterclaims filed by Johnny's lawyer and his comments to reporters indicate that he ascribed a non-economic value to the property that would be difficult, if not impossible, to be translated into a dollar amount.

In contrast, when *Post and Courier* reporter Tony Bartelme asked Woodie Smith, owner of Clouter Creek Properties, about the controversy surrounding the sale he

defended himself by saying “I’m just like you, if there’s an opportunity to make a dollar, I’m going to do it” (Bartelme 2002: 5-B).

Six-years after the evictions, Johnny told reporters that he and his wife felt like “Trees ripped from their roots...We have never really been completely happy since we left” (Bartelme 2007: 150). Clearly, for some of these landowners the land is heritage and a legacy they will leave for the next generation. These heirs are not looking for *any* opportunity to make a dollar, but the value they recognize is legally illegible. In 2010; the Uniform Law Commission drafted the Uniform Partition of Heirs’ Property Act, in hopes of trying to change that.

The Uniform Partition of Heirs’ Property Act includes the right of first refusal, expands rights of adverse possession for resident heirs, but most importantly it fortifies partition-in-kind as an equitable outcome preferable to partition sales (Uniform Law Commission 2010). To establish a legal preference for partition-in-kind, the act requires judges to consider non-market based understandings of ownership, labor, and value when deciding on the most equitable outcome. They must distinguish between tenants in common based on evidence of continuous residency, responsibilities for protecting the property, and their efforts to improve of the property. The act also requires that judges consider sentimental and ancestral value, as well as the harm that will be done to resident heirs if a partition sale is ordered (Mitchell 2014).

In the *Wigfall v. Mobley et al.* case, the heirs, lawyers, law enforcement officials, and Master-in-Equity understood these aspects of ownership labor, and non-economic value, but they were legally irrelevant in establishing an equitable outcome. As of January 2016 the Uniform Partition of Heirs’ Property Act was adopted in six states

(Connecticut, Montana, Nevada, Alabama, Arkansas, and Georgia) and is still under consideration by South Carolina's Committee on Judiciary (Uniform Law Commission 2015).

## CHAPTER FIVE: FAMILY PROPERTY: PRODUCING AND PROTECTING EXTRALEGAL SPACES OF HOME

Author: Tell me about the land where we are now?

Robert: This is the chill out spot, where people come to talk, work out their problems, catch a breeze, say hello, and bring new ideas, discuss.

Author: Is this your family's land then?

Robert: No. My family used to have land across the road. But they lost it when I was young, maybe 7 years old. After that we moved to Florida ...After the military I returned to Wadmalaw and now I rent this house on family land. I expect that the money I give them goes towards the land tax.

Author: Who does this land belong to then?

Etta: Betty's over everything...she stays in Hollywood [South Carolina]. (Interview: Etta & Robert, September 2013).

### **Introduction: Uncovering De Facto Property Regimes**

At first, none of the African American landowners in my research area would agree to an interview with a white outsider, especially when they found out I wanted to ask them about the sensitive issue of property. So my pre-dissertation fieldwork in 2010 and my first year of intensive fieldwork in 2011 consisted mainly of sorting through the county property records, looking for evidence of heirs' property.

This was a difficult task because the county property cards show land that is settled into the dominant regime of fee simple private property. They display a landscape made up of numbered parcels, each with carefully calculated boundaries verified through Global Positioning Systems (GPS), and each with a record of ownership listing the titleholder's name and its recent tax payment history. The cards also list dates of conveyance and record the occasional tax delinquent auction, which (as described in

chapter three) temporarily unsettles ownership until the county's bureaucratic practices produce clear titles with well-defined ownership rights and responsibilities assigned to individual owners.

Upon closer investigation, however, it became clear to me that property relations on some of these parcels were not as settled as they first appeared. Some property cards showed parcels last conveyed in the nineteenth century and some of those titleholders' names were followed by the phrase "heirs of" or "et al." From my research on heirs' property law and interviews with the staff at the Center for Heirs' Property Preservation (CHPP), I knew that the title on these parcels was clouded, leaving them vulnerable to dispossession and unusable as an asset (Interviews: CHPP Executive Director, July 2010; CHPP Supervising Attorney July 26; 2010).

Despite these legal ambiguities, these parcels continued to be used as extralegal spaces of home. Places where legal property rights were unsettled, but there was clearly an active de facto property regime at work. In fact, the county's own online Geographic Information System (GIS) and satellite imagery showed family compounds, clusters of houses with swept yards, gardens, and sitting areas shaded by live oaks on parcels with clouded titles. These landscapes of home straddle and cross the designated property boundaries, showing a land-use regime that is not legally inscribed, but nonetheless important to the cultural reproduction and economic survival of these African American communities (see Figures 5.1 and 5.2).

Through participant observation on Saint Helena Island, Wadmalaw Island, and in Phillips I was able to ground truth these suspicions and confirm that these parcels were not deserted because of their clouded titles. I could see people pulling in and out of their



**FIGURE 5.1: A “Sittin’ Place” on Wadmalaw Island**  
(Photo by the Author)



**FIGURE 5.2: Family Compound, Wadmalaw Island**  
(Photo by the author)



driveways, working on their houses and yards, and relaxing in the picnic areas between houses on these parcels.

In February of 2012; I was finally able to gain the trust of enough community leaders to begin interviewing landowners about the extralegal practices that guided property relations on these parcels. From 2012 to 2013 I conducted twenty-five semi-structured interviews and two focus groups with African American landowners who either live on or have a claim to collectively owned land. This qualitative data allows me to fill a gap between the legal scholarship on heirs' property and the regional scholarship on Gullah-Geechee cultural traditions.

Legal scholars have investigated the vulnerabilities of heirs' property (which were described in the previous chapter). This work has inspired Nongovernmental Organizations (NGOs) who help landowners in clear their titles and push for legislative change to accommodate these unique property histories (Fund et al. 1980; Metoyer 2005; Rivers 2006a, Rivers and Stephens 2009; Uniform Law Commission 2010; Mitchell 2014). However, these studies and efforts shed little light on the extralegal practices that produce de facto property regimes and bolster land retention efforts while these properties remain in legal limbo (see Dyer 2007; Dyer and Bailey 2008 for a cultural and legal analysis of heirs' property).

While I am comfortable excusing legal scholars for focusing on de jure property regimes, I am surprised that the Gullah-Geechee cultural studies literature only tangentially addresses land tenure. Numerous book length studies and edited volumes have documented the unique West African influenced craft traditions, language, and folktales found in African American communities in the Lowcountry, while also

describing how coastal development threatens the communities where these cultural practices survive (Rosengarten 1978; Jones-Jackson 1987; Rosengarten 1989; Goodwine 1998a, National Park Service 2005; Frazier 2011). However, very little of this scholarship includes documentation or detailed analysis of how extralegal practices of land tenure guide ownership, land use, and land retention within these communities (see Demerson 1991; Twining and Baird 1991b, Westmacott 1992 for exceptions). This omission disconnects the Gullah-Geechee literature and movement from the legal scholarship and outreach addressing African American land loss.

This chapter strengthens the currently faint bond between the legal scholarship on heirs' property and the literature on Gullah-Geechee culture by uncovering the complexities of the de facto property regime of *family property*: the extralegal practices guiding property relations on properties with clouded titles. The qualitative data I present here describes the complexity and flexibility of the social practices responsible for producing ownership, land use, and responsibilities in the absence of a clearly defined legal regime to determine these property relations. Further, this data shows that family property serves as a cultural mechanism for protecting a network of owners and users from the legal and economic vulnerabilities associated with intestate succession.

### **Theoretical Contribution: The Persistence of Common Property Regimes**

The previous chapter illustrated the power of intertwined state-market practices responsible for enclosures that reinforce the dominance of private property (McCarthy and Prudham 2004; Mansfield 2008; Sevilla-Buitrago 2015). In contrast, this chapter, bolsters the expansive social science literature documenting the complexity, adaptability,

and resilience of common property regimes (e.g. National Research Council 1986; McCay and Acheson 1987c, Feeny et al. 1990; Ostrom 1990; Burger and Gochfeld 1998; Ruiz-Ballesteros and Gual 2012). In particular, two strands of critical property research are crucial for understanding the persistence of common property in African American communities. *First*, the Common Property Theory (CPT) research on the dynamics and sustainability of common property regimes (National Research Council 1986; McCay and Acheson 1987b, Feeny et al. 1990; Ostrom 1990; Burger and Gochfeld 1998; Lundgren 1999). *Second*, the political ecology scholarship on commons reveals these alternative property regimes as a counterhegemonic challenge to neoliberal natures (Emery and Pierce 2005; McCarthy 2005; Robbins and Luginbuhl 2005; St. Martin 2005; Bakker 2007; Wolford 2010; Harvey 2011; Newfont 2012).

The primary purpose of the CPT scholarship is to illustrate that commons significantly differ from open-access regimes because they consist of a well-defined group of owners and social embedded management regimes, which give communities a range of flexible strategies for dealing with internal and external threats (McCay and Acheson 1987a). These characteristics are significant for understanding the cultural mechanisms communities use to avoid the inevitable tragedy that Hardin predicted. A well-defined group of co-owners helps communities account for and mitigate *subtractability*: where actions by individuals without a stake in communal resources damage or interfere with the sustainability of the commons (Berkes et al. 1989). This characteristic makes common property management more akin to collective private ownership than open-access regimes because it allows communities to harness rights of exclusion to protect the commons from subtractability (Bromley 1991). Exclusion

replaces the autonomy of individual decision making with collective processes of assigning use rights and duties that privileges the common good over private benefit (Ostrom 1990).

The political ecology scholarship on commons has largely drawn attention to the power dynamics involved in their erasure and persistence. In part, political ecologists describe the persistence of commons as a reflection of the benign neglect of the state or an illustration of its inability to comprehensively see and inscribe the dominant model of property (McCarthy 2002; Emery and Pierce 2005). These findings further challenge the dualism of private/common property by drawing attention to the unexpected degrees of enclosure and layers of ownership that emerge where privatization and collective ownership collide (St. Martin 2001; 2006; Blomley 2007b, Blomley 2008a, Ruiz-Ballesteros and Gual 2012).

Finally, political ecologists have challenged romanticized notions of the moral economy by drawing attention to conflicts among co-owners and social hierarchies that affect practices of assigning use rights and exclusion within communities (Harvey 2011). These conflicts often reflect tensions between changing worldviews about how best to manage communal resources in the context of changing external pressures (Mackenzie 1998; Wolford 2006). The persistence of commons, therefore, relies in large part on how successful common property owners are in using social practices of consultation, negotiation, and approval to resist and adapt to the intensification of vulnerabilities associated with dispossession.

### **Background: Heirs' Property vs. Family property**

Heirs' property? That's what you call it. We just call it the family property (Interview: Tosh, September 2012).

During my interviews and participant observation landowners used the terms heirs' property, family land, and family property interchangeably to refer to both de jure (legal) and de facto (extralegal) common property ownership. I have chosen to use the term *family property* to describe the de facto form because on Wadmalaw Island in particular, interviewees used this term to describe family traditions, negotiations, and conflicts occurring outside of the legal or bureaucratic process. I decided not to use the term *family land* because that term is well established in the literature on Afro-Caribbean communal land tenure (Clarke 1957; OAS 1986; Olwig 1995; Walters 2012). While this form of communal kinship-based land tenure shares historical and cultural similarities with family property, it seems inappropriate to co-opt this well-established and regionally specific term, especially when my respondents used the term family property with equal frequency (Interviews: Penn Center Director, November 2011; King, November 2011; Rubin, February 2012; Marcus, September 2012; Ashe, September 2012).

Both the legal scholarship on black land loss and Gullah-Geechee literature rely exclusively on the term "heirs' property" to describe patterns of African American communal land tenure in the American South. However, I argue that it is important to make a clear distinction between heirs' property de jure rights of tenancy in common and the de facto rights of collective ownership associated with family property. By differentiating between the two, I can better analyze the conflicts, overlap, and intertwining of litigious, bureaucratic, and social practices affecting landowners.

As described in the previous chapter, when a landowner dies intestate, the de jure commons of heirs' property is not automatically established. Without a *Quiet Title Action* the title to intestate property remains in the name of the deceased owner and the identity of heirs and their interests remains clouded. As long as county property taxes are paid and potential heirs do not begin the legal process of clearing title the state has little recourse or incentive to settle ownership disputes on these parcels.

For example, while the *Wigfall v. Mobley et al.* case was unfolding, a Charleston County tax office official was asked about the prevalence of intestate succession in the region. He described how: "We know of people who have been dead for 70 or 80 years, and according to records, they're still paying their taxes" (Walt Martin quoted in Bartelme 2000: 9-A). My results will show that this combination of the state's benign neglect and landowner awareness of the vulnerabilities associated with clearing title has led to the proliferation of family property, a system of extralegal social practices that take the place of legally inscribed tenure.

### **Case Studies**

The twenty-five semi-structured interviews and two focus groups I conducted with African American landowners on Wadmalaw Island, Saint Helena Island, and in Phillips reveal the wide diversity of extralegal practices associated with family property. In contrast to the legal case studies presented in the previous chapter (which revealed a strict and structured process of defining heirs and assigning rights), family property relies on flexible understandings of kinship, with rights assigned based on socio-economic bonds,



needs, and negotiation rather than bloodlines and legal procedure (Rose 1964; Flynn 1983; Saville 1994; Penningroth 2003).

Instead of attempting to make generalizations about the rules and structures of family property, I have written five case studies to help illustrate the flexibility and diversity associated with this form of land tenure. These case studies are followed by a discussion that adds additional insights from focus groups and participant observation to address the overlapping and divergent extralegal practices of family property.

### *1) Peter: Titles, Partitions, and Persistent Extralegal Rights*

Both of Peter's biological parents grew up on Wadmalaw Island, which gives him legal ownership claims to two different parcels. Both parents died intestate, but the title to his father's land is now fee simple property and his mother's remains family property. Peter's father owned one-acre of land in fee simple at the time of his death. When he died, Peter's mother moved back to her family property on the other side of the island so she could be closer to relatives in her later years. Peter's sister moved in with their mother to help take care of her, while Peter continued to rent a home in the city of North Charleston.

Since their father had died intestate and none of their other siblings filed a Quiet Title Action, the paternal parcel was managed as family property for several years. During that time the siblings gave permission for their cousin to live on the parcel. In return, the cousin helped with the property taxes and took care of the grounds. When their mother passed away intestate, Peter's sister decided she would continue to live on the maternal family property. She and several other non-resident siblings agreed it would be

best to clear the title to the paternal family land and convey a clear title to Peter, who was then ready to leave North Charleston and retire on Wadmalaw Island.

The Quiet Title Action removed the legal risk from the paternal property and provided Peter with a safer and more economically feasible place to live. It also provided a home for Peter's daughter, Ashe. When Ashe had her first child, she made a financial and quality of life decision to leave North Charleston and come back "home" to Wadmalaw Island. So, she called her father and arranged to set up a trailer on the one-acre parcel. Ashe says this arrangement gives her a "quiet place" to raise her daughter, a place where her daughter can share the history, memories, and country lifestyle that helped make her the person she is today (Interview: Ashe, September 2012).

Despite the legal privatization of the paternal parcel, Peter insists that the paternal land is still managed family property. He insisted that all of his siblings and extended kin can negotiate use rights to this legally secure parcel if they lose their land or their health declines.

Yeah, I'm on my father's piece...I kind of like try to claim it for myself cause my brothers and sisters they're all, they're not here, they've got their own little things they do so. But in reality, it's still family regardless of whether they's here or not (Interview: Peter, September 2012).

For Peter, residency and legal title do not strictly define ownership. His residency and legal ownership give him the power to make decisions about the property, but it also means he is responsible for making sure the land is protected from legal and bureaucratic dispossession. He is responsible for providing a safety net for the extended family. Further, Peter told me that his claim to his father's parcel does not interfere with his ability to claim a "piece" of his maternal family property where his sister lives.

Peter's sister lives on a two-acre lot that she legally partitioned from sixty-four acres of family property shortly after their mother's death. Before she died, their mother worked out an oral agreement with all of the other elders on the family property. Through amicable litigation the family filed quiet title and partition actions to "cut off" the two-acre lot. While this process legally transformed the remaining sixty-four acres of the parcel from family property to heirs' property, increasing its legal vulnerability, Peter insists that "The Sixty-Two" is secure because the family has demarcated extralegal boundaries within the heirs' property to ease tensions, but everyone still ultimately sees the property as collectively owned.

See my family, we're pretty close-knit. We're kinda like, you know, get along, everybody gets along. Ain't nobody tryin' to be greedy this and that. If somebody comes through something, we help one another and we help one another...I ain't tried to put my stake out yet with the 62 property down there. I could probably try to lay claim to one of their pieces of property. That's what I say, "their piece" but then still everything goes as one pretty much (Interview: Peter, September 2012).

Some of Peter's neighbors have lost their land because of family squabbles that spilled over into the courts. However, he claims that frequent communication and the respected guidance of the elder generation helps mitigate conflicts in his family. Peter recalled how after his father's death, his mother was welcomed back to her family property and her decision making power over who could use and live on the land was honored.

His family's elders have also mitigated conflicts over building homes along the waterfront. Some family members squabbled about the value of the waterfront land and were afraid of rising property taxes associated with waterfront lots. So they reached agreement to build all homes on the inland portion of the property. And even though each family member has their "piece" on the inland portion, they decided to use the waterfront

as a common area so that all family members would have a place to picnic, shrimp, and fish. There is even some discussion about building a fishing cabin that can be shared by the whole family.

While the family is cooperating now, Peter was realistic that those dynamics can change. In fact, he even identified one family member as a possible risk.

Peter: My cousin down there, she's got a son and he buys land and real estate. And nobody wants to see him grab a hold of it. That's what everybody's afraid of, that he's gonna try to get their—Well, you know, of course he's got to go through everybody else though.

Cap: So, it's not family property then?

Peter: It's family property.

Cap: If it's family property he can't even step up above unless he gets—

Peter: That's what I'm saying. He got to go through everybody (Interview, September 2012).

With the loss of both parents, Peter and his sister are part of the elder generation, which gives them a greater extralegal responsibility to mitigate conflict and serve as a barrier for those who might want to sell the entire property. While the previous generation relied on negotiations among elders *and then* entered the courts to legally inscribe those decisions, Peter's generation is more aware of the overlap between their legal and extralegal rights. This dual power, he told me, provides peace of mind that the land will continue to serve as family property (Interview: Peter, September 2012).

## *2) Kitty: Marriage, Risk, and the Main Heirs*

Kitty lives on a half-acre parcel of her husband's family property down the road from Peter. Before her husband was born, all of his extended family lived together. But they

lost that original property in a tax auction. After that the family spread out on the island, moving on to smaller parcels they purchased from other community members. Her husband's parents purchased the half-acre lot with clear title, where they raised four children. All four children still live on Wadmalaw Island, but with such a small acreage each child eventually moved onto their spouse's property or purchased their own parcels.

When both parents died intestate, the title became clouded and the parcel remained vacant for a time. Then, Kitty's husband left his first wife and gained permission from his siblings to set up a mobile home on the family property. He met Kitty, who moved in with him in 2003. Together they paid the property taxes, took care of their own children, and even took in a grandchild.

Kitty's husband died intestate in 2009. She became concerned about her legal rights to the property because she was never legally married and was unsure about the legality of her husband's first marriage and divorce. After consulting with a lawyer, she found out that the property could be claimed as heirs' property by her husband's four siblings, who Kitty described as the "main heirs" (Interview September 16; 2012). However, these main heirs were not interested in clearing title and remained committed to managing the property through extralegal practices.

Before he died, Kitty's husband told his siblings he wanted his wife to be able to live on the property and he wanted interest in the parcel to pass to a son. But after his death, two of the main heirs and some of their children asked Kitty to leave the parcel. She refused, despite threats and intimidation from some of her nieces and nephews. In the midst of this family conflict, Kitty ran afoul of the law, served time in prison, and was then sent to a drug rehabilitation facility in Florida. While she was gone, a group of

nieces and nephews moved into the mobile home. They had permission from the main heirs to live there as long as they paid the taxes on the land and mobile home.

While Kitty was gone, the nieces and nephews consulted a lawyer about selling the property to make a profit. But they found out their parents (the main heirs) held the only legal claims to the property. They also failed to pay the taxes on the land and mobile home, allowing them to fall into tax delinquency. By the time the main heirs found out about these transgressions, they had to quickly pool their resources to rescue the trailer and land from the Charleston County tax auction block. Shortly afterward they evicted the younger generation from the parcel.

When Kitty was released from drug rehabilitation she consulted with her husband's siblings about returning to the family property. The main heir who had taken the lead on paying the back taxes spoke up for Kitty's use rights based on her marriage, residency, and past tax payments. She also cited the irresponsibility and selfishness of the nieces and nephews as reason to restore Kitty's property rights, which would reduce the risk to the property.

Though her mobile home was severely damaged due to the neglect and abuse of her nieces and nephews, she has moved back in to repair and rebuild the home that she and her husband shared.

I can't let them take what me and him built together. I can't...I can't let them take it away from me... My brothers want me to give up. I can't, I can't, I can't cause he tell me not to do it. He asked me to take care of the property and I got to. It's all I've got...I ain't gonna let nobody, not your family, sister, brother, or niece, nephew, daughter. None. You know what I tell him. FUCK YA'LL. Excuse me. I'm not gonna cave in. I'm gonna do what my man asked me to do: take care (Interview: Kitty, September 2012).

Given the legal vulnerability of her situation and the checkered relationship with the main

heirs, I asked Kitty if she felt secure on the property. She spoke highly of one main heir whom she lovingly refers to as her “sister.” She also told me that the small size of the parcel made it prohibitive for the family members to sell it, but due to county zoning it also prevented them from placing a second home on the property if any other family member might want to use it. As long as the property taxes are paid, however, she feels confident that the main heirs will not try to force her out. The next generation of heirs, however, that’s a different story. But she told me that she is originally from Hollywood South Carolina, and her parents left family property there to be split between her and a brother. So, if need be, she can always return to Hollywood, though Wadmalaw feels more like home.

### *3) Robert & Etta: Land Loss, Community, and Usufruct Rights*

Family property is important because it’s important for heritage, and so people have something to lean on. Even if you lose everything you’ll still have some place to go...When it’s time for them to come back and live in the country, they know they’ve got—like I said: have something to fall back on, come back to (Interview: Robert, September 2013).

Robert and Etta live in a cabin on a three-acre parcel with two other families living in a one-story house and a mobile home. The titleholder passed intestate in the mid-twentieth century and the title remains clouded, but the two children of the intestate titleholder have a vested interest in retaining the land as family property. One was described by Etta as “over everything” (Interview, September 2013). This heir coordinates property tax payments and moderates all land-use decisions among the heirs and non-family residents. This main heir does not live on the property, but on a parcel with clear title in Hollywood, South Carolina that she inherited from a different branch of her family. However, she stops by often to see that the homes and grounds are in good condition, and

to check in on the residents living there.

The younger sister of this main heir lives in the one-story house and her son lives in the mobile home next to Robert and Etta. They take responsibility for keeping up with home maintenance and the grounds, but they rely on the main heir to keep up with the property taxes and make sure their land use is compliant with county zoning rules. Robert and Etta are not connected to the title holding family by blood, marriage, or rearing. Their rights of use are secured through a long history of social relationships and a nominal rent fee that helps with the property taxes.

Robert was born on family property adjacent to this parcel. When he was young, Robert and his family moved to Florida for work. While they were gone a family conflict over the property erupted and the judge ordered a partition sale to settle the dispute. His family received some of the proceeds from the sale, but they lost the land. When Robert's family decided to return to Wadmalaw Island, they moved into the one-story house on the parcel where he lives now. His parents were friends of the main heir who informed them that the house was vacant. Robert lived there for a short time until he joined the military. When he returned from his service, his parents had passed away. The sister of the main heir had returned to the one-story house and her son has moved into the trailer on the family property. The cabin, which does not have running water, a septic tank, or electricity, was empty. So Robert made a handshake agreement with the main heir to pay a flexible amount of money, tied to the property tax payments, to live in the cabin.

Etta was born on a parcel of land a few miles down the road. The property belonged to her grandmother, who always told Etta she would get a piece of the land for herself. But when she died intestate, a family conflict led to a different outcome than the



oral will of her grandmother. After a dispute among the main heirs over property tax responsibilities, an uncle who Etta described as “in charge” of the property was able to clear title and partition his interest. This allowed him to secure legal rights for him and his children, who still live on the property. Some other branches of the family were unable to keep up with the property taxes and their land was “stolen” through a tax auction (Interview: Etta, October 2013). When I asked her what advice she had for other families she said:

If there’s enough to go around, I would tell them, “Hey look this was left by our parents, grandparents, or whatever and now it’s time for us to conquer and stick together. Cause if we don’t? You never can tell. Another man can walk right in and snatch ‘em out from underneath your nose and won’t even much know. There’s a lot of people out there that can’t pay that land tax by themselves (Interview: Etta, September 2013).

She took me to the parcel that her grandmother promised her and told me that was “her piece,” but after I took a few pictures she told me we needed to leave before “we got in trouble” (see Figure 5.3) (Interview: Etta, October 2013).

Etta now lives with Robert in the cabin on the three-acre parcel where there is more acreage and housing than is currently needed by the family members. The rent they pay eases the burden for the resident and non-resident heirs on that parcel, therefore reducing the risk of dispossession. Robert and Etta described a feeling of security about their ability to remain in the cabin long-term because of their faith in the bond between Robert’s family and the main heir. They did describe some neighborly tensions with the resident heirs over the up-keep of the yard and the use of their shared driveway. However, the main heir has eased those tensions because she is ultimately “over everything.”

**FIGURE 5.3: Etta's Grandmother's Cabin**  
(Photo by the author)



Etta and Robert both expressed concerns about the condition of the cabin and a desire to upgrade their housing at some point. Etta has not completely abandoned the possibility of negotiating some use rights to what remains of her family property. The importance of family property that Robert described in the opening quote is something that he and Etta have lost from their direct kinship networks, but gained through wider community networks of friendship and intimacy that extend far beyond the bureaucratic and litigious definitions of heirs property. While those state practices facilitated their displacement, the social practices of family property provide an economic safety net.

#### *4) Rosa: Rearing, Residency, and the Rule of Law*

Rosa is in her 70s and has lived on a one-acre lot on Wadmalaw Island since she was twelve years old. She was not raised by her biological parents, but raised by friends of her parents who accepted her and her sister as their own children. When Rosa married she moved out of the house she grew up in and set up a mobile home on the back portion of the property where she was raised. She took care of the elders who had cared for her, and before they died they made it known to the rest of the family that Rosa should always feel welcome on the family property. Both elders died without wills in the mid-1980s and the title became clouded.

The titleholders had three children: one biological daughter, as well as Rosa and her blood sister who were raised on the property. At the time of their death, both the biological daughter and Rosa's sister were living elsewhere. They both made it known that they had no plans to return to the family property.

Even without a will, the biological daughter could have filed a Quiet Title Action

and had the deed transferred into her name without much legal complication (something the family was apparently unaware of at the time). Instead, they allowed the property to remain in the name of their deceased father and managed the parcel as family property. They all agreed that Rosa had earned ownership rights since she had lived there all her life, set up a mobile home, taken care of the “old folks” when they were ill, and agreed to keep up with the property taxes (Interview: Rosa, 20 October 2012).

Since that arrangement was established, Rosa has kept in touch with her siblings and their children to strengthen her de facto ownership claim, and has taken charge of the property taxes in hopes of strengthening her de jure claim. She transferred the property tax billing account into her name and made sure the bill was sent to her mailbox (the vacant house and mobile home have separate mailing addresses). Since her sister and only living legal heir had passed away, she has stayed in touch with the generation of heirs she left behind, who are also not interested in the family property because they have fee simple ownership over other parcels on the island (Interview: Rosa, 28 October 2012).

The parcel is not only home to Rosa and her husband, but also her daughter and three grandchildren. The family property has served as a safety net for Rosa as she has gotten older and her husband’s health has declined. It also gave her daughter Tina a place to bring her children to escape from an abusive marriage and hazardous living situation in North Charleston (Interviews: Tina, October 2012; , November 2012).

In 2012; however, the legal vulnerabilities of the property were exposed and Rosa’s situation became tenuous. Through a combination of bureaucratic oversight and lack of awareness over the parcel’s tax status, the property became tax delinquent and was sold at auction. The new owner gave her the choice of buying the property back from

him, paying rent, or being evicted (none of which she could afford).

Rosa: He said this is heirs' property and the property don't belong to me. That's what he told me.

Author: And what did you say?

Rosa: I said, "Well, I've been here just about most of all of my life since I've been twelve." He said, "But still, they're dead and this is heirs' property. You might pay the tax, but it don't belong to you." That's what he tell me! (Interview, 20 October 2012).

Shocked by his assertion that Rosa did not own the property, she asked me to "look into the situation" and to take her to a lawyer so she could fight back (Interview: Rosa, 28 October 2012).

Using county property records, I found out that the property was sold at auction, but there was a balance from the sale price minus property taxes and fees, which was available to the heirs of the deceased titleholder. This amount would cover the majority of the cost for buying the property back, but could only be claimed by a legally identified heir (see Figure 5.4). In preparation for the visit to the lawyer, Rosa and I sat down with her daughter to record her family tree, an event that exposed a conflict between de facto and de jure definitions of "heir" and therefore ownership.

Author: Ok, what we've got to figure out now is if there is anybody else in the picture that might have a claim to this property. So we have your niece. She didn't have any children?

Rosa: I don't know, but she ain't got no claim to no part of this property, I know that.

Author: Ok, why do you know that?

Rosa: Because I've been staying here! (Interview, 20 October 2012)



**FIGURE 5.4: Rosa's letter from Charleston County**  
(Photo by the author)

**COUNTY OF CHARLESTON  
DELINQUENT TAX DEPARTMENT**

**BALANCE IN TRUST CLAIM  
CHECKLIST**

If claiming overage for property that was in your name:

1. Copy of deed or probate conveyance sheet placing title to the property in the name of the claimant to verify to whom the refund check should be made payable.
2. Signed "Claim By Defaulting Taxpayer For Overage" form. Please be sure to sign the form and provide telephone number(s) in case we need to contact you.
3. Copy of valid driver's license or other picture identification.

If claiming overage on behalf of the heirs of property in the name of an estate:

1. Copy of deed or probate conveyance sheet placing title to the property in the name of the estate to verify to whom the refund check should be made payable.
2. Affidavit from each heir authorizing claimant to receive refund check on behalf of the heir.
3. Signed "Claim By Defaulting Taxpayer For Overage" form. Please be sure to sign the form and provide telephone number(s) in case we need to contact you.
4. Copy of valid driver's license or other picture identification.

Rosa was frustrated that I insisted we make a family tree including blood relatives who had never lived on the property. Her frustration grew when we showed the family tree to the lawyer and he asked her if she was legally adopted. She was not and he informed her that she was not an heir and therefore had no legal right to pursue an ownership claim or the balance of the land sale.

Rosa refused to accept the lawyer's assessment, countering with numerous descriptions of rearing, residence, and caregiving to establish herself as an heir. He explained that her only legal recourse was for her brother, the biological son of the people who raised her, who was two generations removed from the last fee simple owner, to establish his status as an intestate heir at which time he can vouch for her as kin and, if willing, transfer a portion of his interest to her. So far, the legally legible family members are unwilling to undertake this time consuming and expensive process.

##### *5) Garrett: Siblings, Roots, and Possibilities*

The ten-acre parcel of land where Garrett lives is part of an original thirty-acre parcel of land that was purchased by his grandfather and his two brothers in the late 1800s. The three brothers, who were living and working as sharecroppers on someone else's land, pooled their resources to purchase the thirty-acre tract as co-owners. When Garrett's grandfather died intestate, his son (Garrett's father) met with the other original titleholders. They agreed to subdivide the land into thirds so that it could pass to the next generation without the legal complications of heirs' property rights spread among three branches of extended family. Garrett's family portion remained a ten-acre parcel because there was only one heir on that side of the family. After the other two original owners

died intestate, those families got together and further subdivided the parcels to account for their number of sibling heirs.

You see when I was coming up property was like a word of mouth type thing. So, when the government got into it, as far as, you know, property and how you got to pay the tax and all of that, a lot of them didn't have nothing to go on because they didn't have no paperwork... Years ago I was pretty worried about it, but now I think it is kind of under control a little bit as far as how the land go forward... My dad got with his uncles and separated their pieces so everything would be more organized with the family to where you wouldn't have to worry about families arguing or fussing and trying to get some type of control of their land (Interview: Etta, September 2013).

These actions secured legal fee simple rights for the children of the original heirs, an action that Garrett recommends to others because it designates specific legal responsibility for property taxes to immediate family instead of extended family. However, despite the legal subdivision of these parcels, Garrett described the entire acreage as family property, with extralegal practices shaping use rights and responsibilities across the entirety of the original thirty-acre tract.

When Garrett's father died intestate, he and his three sisters filed a Quiet Title Action since they knew there were only four owners, each with an equal amount of legal interest in the parcel. Instead of filing a Partition Action to establish fee simple ownership to separate tracts for each heir, they used the courts to establish tenancy in common by assigning the title to all four heirs. Two of the siblings are resident heirs and two of the siblings live in other parts of the Lowcountry. Since these non-resident heirs have no intentions to move back to the family property, the resident heirs take the primary responsibility for land management and property taxes. However, the resident heirs can *and do* ask for help from non-resident heirs when needed.



Use rights on the entire thirty-acres extend to family members across the property boundaries established by the county. Garrett's parcel is landlocked, but he has access to the waterways through his cousin's parcel, giving him access to productive fisheries and oyster beds. Although he does not need to do as much crabbing, shrimping, fishing, or oyster picking these days, the access is important to his identity, which he says is rooted in the "old days" when he and his family "lived off the water and off the land." Further, he and other family members enjoy just having a place to relax by the water without "trying to get permission" for access to increasingly exclusive waterfront spaces. Garrett worries that the next generation lacks the same "connection to the land," but thinks they will eventually appreciate the importance of family property (Interview: Garrett, September 2013).

See, a lot of the younger generation, they don't understand. As they get old enough like when they get out of school they don't think too much about the land they were raised up on. All they want to do is get away...After a period of time they might get married or raise a family or whatever, then they starting to realize that they don't really have anything to build on as far as a foundation...As long as they keep some kind of family ties, the family will always have something to fall back on. To me, that's why it's important to hold on to your property (Interview: Garrett, September 2013).

Garrett does not have a will yet, but he has discussed inheritance with his sisters. Two of his sisters live in other parts of the Lowcountry and so do his own children. Some of the next generation have rights to other parcels of family property on James and Johns Island, which are closer to Charleston and provide more job opportunities than Wadmalaw. He also pointed out that since his father was an only child, he hopes there is plenty of land to go around for the next generation. He and his sisters have decided that the ten-acre parcel on Wadmalaw should be divided between the children of the resident heirs. That plan,

however, can still be altered as their children grow older and the needs of other heirs change. They are not quite ready to put anything in writing yet, because there are still “possibilities” (Interview: Garrett, September 2013).

### **Discussion: Family Property and Land Retention**

The case studies above illustrate that family property is a de facto commons that can be differentiated from its de jure counterpart: heirs’ property. In this section I will review some of the common characteristics of family property with a focus on how owners are determined and how interests among them are assigned. This discussion concludes with an analysis of how the convergence and divergence between family property and heirs’ property affects land retention and dispossession.

#### *Determining Owners*

When heirs to intestate property are determined through litigious practices, ownership rights are held by the eldest member of each branch of a family tree, which is defined through bloodlines and legal bonds of marriage or adoption. On family property, however, ownership and use networks are more complex. They can extend to include those who do not meet legal kinship requirements and retract to exclude those who pose risks to land retention.

The family property networks described in the cases above extend beyond biological family members to include: Peter’s cousin, Rosa, Kitty, Robert, and Etta. Their property rights are based in part on direct material contributions to property taxes and land management. While these practices do not solidify ownership rights, they do

establish usufruct rights because they contribute to strategies of mitigating economic and bureaucratic risks of dispossession through tax delinquency and bureaucratic condemnation. Rosa and Kitty's rights are bolstered by childcare, elder care, and partnership that inscribe extralegal understandings of kinship. Within the de facto commons, these rights extend beyond mere use and constitute ownership because blood family members recognize their status as siblings and wives respectively.

Angela, who lives in East Cooper and has family property on Johns Island, recounted a more extreme example of extending rights beyond the family network. Parts of her family property on Johns Island were subdivided into fee simple parcels, but six and a half acres of land along a creek is still held collectively as a de facto commons for she and her cousins. The property boundaries include an old house that someone moved in without her family's approval. After she discovered them living in the house, she and her cousin's decided it was best to let them use it since they had been displaced by an heirs' property dispute elsewhere on the island (Interview: Angela, March 2012).

Ownership and use rights to family property can also extend to younger generations of family members who would be legally blocked from heir status by their living parents or grandparents. These "main heirs" can also exclude or restrict those rights if they cause family conflicts or increase risk. Peter, Garrett, Robert, and Etta all described in detail how communication between family members and a shared vision of the property as a collective resource were essential to the retention of family property. Peter's family is "keeping an eye" on his cousin, who is a realtor, and the evictions of Kitty's nieces and nephews reflect how practices of exclusion can reduce the risk of family conflict.

Another Wadmalaw resident, Rubin, told me he was worried about losing his family property to a combination of “the system” and “janky people” (Interview, February 2012). In his case, his mother is the main heir and only permanent resident on his family property. He and his brother have a good relationship with their mother, but their sibling rivalry has become increasingly violent and once resulted in a fire, allegations of attempted murder, and prison. Rubin works a variety of cash paying jobs on the island and without a car, he often finds himself relying on a network of extended family, friends, and employers for lodging. Both he and his brother return to the family property often, but may stay away voluntarily or be asked to stay elsewhere by their mother if conflicts emerge.

### *Degrees of Interest*

When rights to intestate land are assigned through litigious practices, each co-owner’s interest is based solely on their degree of separation to the deceased titleholder. Further, all co-owners hold undivided rights of use, responsibility, and decision-making power, no matter how small their interest. Family property, on the other hand, involves highly differentiated power based on age, residency, and labor.

For starters, while family property can extend rights to a wider-range of people than heirs’ property, decision-making power is unevenly distributed throughout this network of users. The case studies above illustrate the lack of leverage that extralegal users have when family disputes emerge. Kitty’s reliance on the “main heirs” and Etta’s reference to a main heir that is “over everything” illustrate the increased power that resident heirs and elders hold within the family property regime. Both Kitty and Rosa

have benefitted from extralegal decisions about their status as users and rights of use, but they clearly do not hold the same decision-making power as blood relatives, even within the de facto commons.

Within the family of owners, age is clearly a factor in determining power within the family property network. Both Peter and Garrett described how past decisions about family property were made by their parents and how the recent passing of their parents bestowed greater responsibilities and powers on them. This power extends to the types of decisions about inclusion and exclusion referred to above. These generational hierarchies hold up across my interviews and focus groups, and are mostly consistent with the ownership rights assigned to heirs' property owners. The major difference is in how power is distributed among siblings and cousins from the same generation.

Through the de facto regime, family members who live on the land have more decision making power over land management decisions. The Gullah-Geechee phrase "*bin yah*" is a term of respect that refers to people who have stayed in the Lowcountry all their lives. "*Cum yah*" is a derisive term used to describe outsiders who have no historical connection to the Lowcountry, but have migrated to the area (St. Helena Island Focus Group, May 2012).

During my thesis fieldwork I also heard the phrase "*cum yah-lately*," which was used to describe people who were born or have ancestry in the Lowcountry and have "lived off" and return later in life (Grabbatin 2012b). Interestingly, blood relatives, no matter their life history, are commonly welcomed home to family property. Take, for example, Peter and Garrett who have cleared title to portions of their family property, yet described their willingness to welcome siblings and children to the property if they

decide to return to Wadmalaw. Or Billie, from Saint Helena Island, who lived in New York her entire adult life, but when she decided to retire she was invited back to the family property by her siblings (Interview, January 2012).

The resilience of these rights was important for African Americans who left the South during the Great Migration and continues to be important for a new generation of *cum yah-lately* who are returning home to reconnect or connect for the first time with their heritage (Falk 2004; Sisson 2014). However, the *cum yah-lately* whom I interviewed also expressed the need to consult with the *bin yah* in order to work out the timing and specific location of their move “home.” For example, Kitty’s rights to her husband’s family property are tenuous, but she expressed more confidence in her rights to property left by her parents in Hollywood. Terri, another Wadmalaw resident also from Hollywood, told me she knew next to nothing about the status of the land she lived on because it was her husband’s land. However, she would be secure in the long-term because she had rights to the family property where her siblings live.

The focus group on Saint Helena Island verified the importance of age and residency in the family property network, but from their experience demonstrating responsibility for the property is the most important aspect of establishing power within the family network (St. Helena Island Focus Group, May 2012). The “main heirs” and people “in charge” of the property may not necessarily be the eldest family members or resident heirs, they may simply be the most educated, financially well-off, or most dominant personalities within the family. One way for a family member to assert power within the family is to register their address with the property tax office and make sure their name appears on the property tax receipt. As I illustrated in the case of *Wigfall v.*

*Mobley et al* this responsibility does not assign any greater interest or power to the responsible party. However, this extralegal practice makes the family member responsible for communicating and coordinating action among landowners and users. This main heir typically solicits contributions from resident and non-resident family members and residents with usufruct rights.

Even family members who never plan to return to the land may contribute to help pay taxes or help with yard work to secure the property for others or a safety net for themselves. They may see the property in its monetary value, as an investment and asset that will grow with time or see it as something that should not be sold because of the history and struggle embedded in its soils. Money collected at family reunions is another common practice, where extended family without a direct legal or extralegal claim can help protect inherited land.

The property itself may be used as a site for these gatherings, and therefore provide value to an extended group of temporary users. This is also an opportunity for non-resident heirs to reconnect with the family property and for all heirs to discuss potential future scenarios for the land. Some communities even have “Friends and Family Days,” fish fries, oyster roasts, or festivals just before tax season that invite the entire community to come and assist in helping pay the property taxes (see Figure 5.5). They increase solidarity within the community, reconnect the community to the land, and activate social networks that also serve as economic safety nets.

**FIGURE 5.5: Friends and Family Day in Phillips Community**  
(Photo by the author)





*The Consonance and Dissonance of Heirs' and Family Property*

Finally, the convergence and divergence of heirs' property and family property uncovers complex relationships between these two forms of ownership that are crucial to understanding land retention and dispossession. When de jure and de facto regimes clash, the differences between divergent understandings of ownership and interests emerge. Situations like Rosa's show that conflicts between de jure and de facto rights can expose the unwillingness and inability of family members to honor the extralegal practices of family property. In other cases, the overlap between de jure and de facto practices can help to protect land from dispossession and insulate extralegal kin from exclusion. For example, extralegal negotiations within a strong network of elders secured Kitty's use rights. The youngest generation of the family sought out legal counsel to stake a claim to the property, but found out de jure rights also belonged to the group of family members acting as the de facto main heirs.

Experiences with pursuing complete or partial legal resolutions to land conflicts are also mixed. For Etta, and other heirs, clearing title and subdividing the property was a process that transformed her family property from something that was "supposed to be heirs' property" into land where "everybody cut their own" (Interviews: Robert, September 2013; Etta, September 2013). For her immediate family, this resulted in increased vulnerability because they could not keep up with the property taxes on their own and eventually lost their portion of the family property at a delinquent tax auction. However, for her uncle clearing title and subdividing land was a process of removing the legal vulnerabilities of heirs' property and a valuable strategy for land retention. For Garrett's family, it is important to cautiously engage in legal and bureaucratic practices,

but to balance those actions with the traditions of family property where ongoing negotiation and discussion are their biggest ally in securing an equitable and appropriate future for their family on Wadmalaw.

### **Conclusion: Family Property as a Cultural Mechanism for Land Retention?**

While family property retains legal and economic vulnerabilities, it does serve as a cultural mechanism for protecting land that helps explain the reluctance of families to clear title. When asked, nearly all of the landowners, lawyers, and activists I interviewed for this project agreed with the legal scholarship that high rates of intestate succession in African American communities are primarily the result of racial inequalities, which reinforced illiteracy and fomented distrust of local government (Mitchell 2001). African American interviewees were more likely to also mention superstitions about “wills hastening death” and the incongruence between individually owned parcels and cultural values that emphasize property as a community resource.

Emory Campbell, a Gullah-Geechee leader from Hilton Head, says that property conflicts, whether between developers and family members or between family members, are the result of a clash between the Euro-American ideals of fee simple ownership and West African property regimes where “the land belonged to everyone,” a sentiment echoed by the community activists I interviewed (Bartelme 2000; 1-A , Interviews: Black Land Services Director, November 2011; Penn Center Director, November 2011; Queen Quet, February 2012). Most of my interviewees were not so direct in describing their African heritage, but one did compare family property to an “African village” (Interview:

Angela, March 2012) and another described the pattern of inheritance on Saint Helena Island as similar to West African culture (Interview: King, November 2011).

More commonly, landowners described their social practices as consistent with their Lowcountry or Gullah-Geechee heritage and African American rural lifestyles. While the importance of access to land and water for gardening, gathering, grazing, and fishing has diminished among African American landowners today, family property is still the anchor for the family network and a socio-economic safety net for community members with a strong sense of place (Demerson 1991; Twining and Baird 1991b, Falk 2004; Day 1986). Further, it plays an important role today by providing affordable housing in a landscape where resort style development has resulted in a high cost of living and extreme patterns of gentrification (National Park Service 2005)

The Black Land Services Director argued that the pressures displacing African American land and the values of the Gullah-Geechee moral economy co-produced family property. He sees the avoidance of legal practices for legitimating property ownership developed as a conscious response to structural inequality, insisting that the African American community knew they were risking legal dispossession, but they also knew that unclear titles resulting from intestate succession removed it from circuits of capital. While unclear title also prevented heirs from using their land as an asset, this protected them from mortgages and other loans that were common vehicles of dispossession during the Jim Crow era (Interview: Black Land Services Director, November 2011). Intestate succession, therefore, constitutes not only an extralegal property regime that is adapted to the needs of a specific community, but also a series of social practices that are designed

to protect landownership by resisting and avoiding litigious and bureaucratic practices that facilitate commodification and dispossession.

My interviews demonstrate specific ways in which family property continues to serve as a cultural mechanism for protecting these vulnerable parcels. Perhaps the key to the survival of family property is not dependent on the ability to assert the *de jure* rights of tenancy in common associated with heirs' property. Instead, land preservation is dependent on the effectiveness of extralegal practices that settle disputes without exposing these parcels to litigious practices or circuits of capital.

The key to the persistence of these commons and their resistance to enclosure and dispossession—what family property owners depend upon—is that when times get tough and when disagreements among the heirs erupt, these disputes will unfold within the community network, instead of in the courts. Further, family property is not a traditional relic, but a system of flexible understandings of ownership and use rights, inclusion and exclusion, power dynamics and networks with the ability to cautiously utilize legal frameworks, while simultaneously transcending and interrupting them with time tested *de facto* practices.

## CHAPTER SIX: CONCLUSION

This study of heirs' property has *intellectual merit* because it brings together political ecology, legal geography, and historical geography to offer unique insights on contemporary common property in the Global North. Much of the research on the commons has focused on past traditions in the Global North or the contemporary effects of privatization in the Global South. This study places the lessons of these literatures in the contemporary Global North where the power of law and advanced capitalism make it all the more surprising to find alternative forms of land tenure. The property relations uncovered in this study show how the complex interconnections between de jure forms of ownership and de facto social practices impact both material livelihoods and cultural identities. Ultimately, these findings present new varieties and degrees of enclosure and collective ownership that do not fit neatly into the existing literature on common property.

The results of this study also have *practical implications* for understanding and combatting heirs land loss. Despite the odds against them, heirs' landowners are not waiting for policy changes to save them. They refuse to be passive victims, nor are they always willing, or able, to cash in on their land by selling to the highest bidder. The future of heirs' ownership will be shaped by how these landowners understand, combat, and harness a variety of legal, economic, and environmental processes that determine how land is valued and claimed. Case studies, like the ones collected through this project, can serve as an inspiration and an educational tool for landowners and NGOs who want

to create awareness of the vulnerabilities heirs' property owners face or construct new possibilities for preserving land.

This final chapter reflects on the intellectual merit and practical implications of this study in three sections. First, I review the major findings of each empirical chapter and discuss their intellectual contributions. Second, I reflect broadly on how this study contributes to our understandings of common property. Third, I discuss how this study relates to the major trends and future possibilities for the movement to protect heirs' property.

## **Chapter Summaries and Contributions**

### *Chapter Three: Historical Change and Historical Narratives*

This study builds on work by legal scholars by highlighting how historical changes in law have affected heirs' property (Mitchell 2001; Rivers 2007). The historical narrative presented in chapter three relies on some of the same classic histories of Reconstruction and studies of black land loss familiar to heirs' property scholars (e.g. Du Bois [1935] 1983; Rose 1964; Browne 1973; Sanders, Brooks, and Pennick 1980; Foner 1988). However, this dissertation expands the breadth of historical evidence for tracing heirs' property by including some underused secondary sources (e.g. Magdol 1977; Oubre 1978; Dabbs 1983; Cimbala 1989; Frazier 2011) and draws on primary documents to describe the history of some specific land preservation programs in the Lowcountry (e.g. Penn Center 1971; Black Land Services Inc. 1972b, 1974; Penn Center 1986).

The historical narrative presented in chapter three also offers a unique temporal view of heirs' property by emphasizing the connections between social practices and environmental history. This analysis illustrates how temporal cycles of landscape commodification and devaluation have affected property relations in the Lowcountry, and African American landownership in particular. For example, while the region's ecology served as a deterrent to large-scale grabs during the Reconstruction and Jim Crow eras, the eradication of malaria, affordability of air conditioning, and expansion of infrastructure have transformed the Lowcountry into a place of aesthetic and recreational consumption (Cowdrey [1983] 1996; Kovacik 1993a, Halfacre 2012). This environmental history is absolutely essential to understanding the regionally specific trends of land acquisition, retention, and dispossession associated with African American landownership.

Further, the landscape changes associated with rice plantation agriculture led to increased autonomy and the use of kinship-based social practices of claiming ownership, which carried over into the Reconstruction era (Berlin, Miller, and Rowland 1988; Saville 1994; Penningroth 1997; 2003). While the results of this study indicate varying degrees of continuity between these social practices and present day heirs' property owners, it is clear that these de facto property regimes produced patterns of intestate succession responsible for some of today's heirs' property holdings.

Chapter three also explored how today's land preservation efforts are animated by historical narratives. For landowners today, their history and the social reproduction of their communities are inextricably intertwined. Heirs' property owners reinforce this link by circulating oral histories, which expose their memories and interpretation of the past.

The narratives they construct are consequential because they bring contemporary struggles over land into a direct relationship with the past (Kosek 2004; Kosek 2006; Newfont 2012; Himley 2014). The landowners interviewed for this study described how this link to the past exposes lessons, habits, expectations, and obligations that are essential to the way they see landownership and practice land management. These lessons are essential for anyone working with heirs' property owners or anyone who wants to understand the social movement to protect land that is unfolding in the Lowcountry.

#### *Chapter Four: Litigious and Bureaucratic Practices*

The legal and economic scholarship on heirs' property has done a thorough job of analyzing the characteristics and persistent vulnerabilities of heirs' property throughout the United States (e.g. Browne 1973; Sanders, Brooks, and Pennick 1980; Rivers 2007; Deaton, Baxter, and Bratt 2009; Mitchell, Malpezzi, and Green 2010). Their scholarship has led to policy changes and supported effective land retention programs (see Brack 2006; Brooks 2008; Rivers and Stephens 2009; Mitchell 2014). The conclusions from chapter four deepen the findings of this literature, by presenting a step-by-step analysis of how property relations are transformed by litigious and bureaucratic practices. In particular, this chapter reflects on the conflicting understandings of ownership and use rights that emerge when these processes unfold.

This chapter contributes to the political ecology literature on enclosures, which is critical of intertwined state-market practices that lead to the enclosure and dispossession of commonly owned resources (Wolford 2007b, Mansfield 2008; Sevilla-Buitrago 2015). However, the narrative in chapter four is far from a simple story of enclosure and erasure



of the commons. My emphasis on legal case studies brings legal geography into dialogue with political ecology, by exploring how distinctive litigious practices are responsible for shaping property relations and erasing particular property claims (Blomley 1994; Sparke 1998; Blomley 2008a, Graham 2011).

Further, this chapter also uncovers more than the simple erasure or persistence of common property regimes. Instead, it reveals the varying forms, degrees, and layers of ownership that can result from processes of enclosure. For example, when properties pass intestate, they enter a legal limbo where de facto property regimes shape ownership and land use. While unclear title provides protection from predatory lending practices, in a region with a rising cost of living it also prevents heirs from using their land as an asset to combat the pressures of gentrification. The process of clearing title is in essence a form of enclosure, but before private property can be created, this process establishes a de jure form of co-ownership: tenancy in common. As the case of *Wigfall v. Mobley et al.* illustrates, this de jure commons is vulnerable because it allows for individuals to act against the collective interest.

Therefore, heirs' property owners are faced with a difficult choice. For properties with a low ratio of heirs to acreage, quieting title can result in a partition-in-kind. This outcome replaces a legally vulnerable form of common ownership (heirs' property) with a legally secure form of individual ownership (fee simple). Ironically, by enclosing and privatizing the commons, they can avoid a tragedy of incursion and retain the power to still manage their property through social practices. For properties where the ratio of heirs to acreage is high, quieting title can result in partition sales. In these cases, litigious family conflict can obstruct their ability to guide the process of privatization to suit the

needs of the kinship network. This process reconnects parcels to circuits of capital, but reduces the chances that heirs will be able to reap the full economic benefits of this inherited asset.

#### *Chapter Five: Social Practices*

While chapter four focused on the effect of intertwined state-market practices on common property, chapter five uses common property theory to investigate the resiliency of the commons (Emery and Pierce 2005; McCarthy 2005; St. Martin 2005; Harvey 2011). This chapter also strengthens the currently faint bond between the scholarship on heirs' property and Gullah-Geechee culture. While legal and economic scholars have largely focused on the vulnerabilities of heirs' property, these studies have shed little light on the extralegal practices that produce de facto property regimes while these properties remain in legal limbo (see Dyer 2007; Dyer and Bailey 2008 for exceptions). Similarly the scholarship on Gullah-Geechee has documented the importance of land loss for craft, linguistic, and culinary traditions, but has shed little light on how cultural traditions inform the extralegal practices of land tenure (see Demerson 1991; Twining and Baird 1991b, Westmacott 1992 for exceptions).

The landowner case studies in chapter five illustrate both the divergence and convergence between family property and heirs' property. *First*, family property extends rights along the same lines of marriage and birth recognized by intestate succession law. However, through social practices, this de facto regime also extends rights through forms of labor (childcare, elder care, maintenance), residency, and partnership. *Second*, both de jure and de facto regimes assign a greater interest of ownership to elder family members,

described by interviewees as “main heirs” (Interviews: Etta, September 2013; Kitty, September 2012). However, power within the de facto regime is also differentiated by residency, labor, and responsibilities for the property. For example, one way for a family member to assert de facto power is to register their address with the property tax office. This does not extend any additional de jure rights (although some landowners assume that it does), but within the family network it shows commitment and responsibility. Similarly, heirs who are highly educated, financially well off, or have dominant personalities may also have a powerful voice when land use decisions are made.

This analysis of family property uncovers the complex relationships between de jure and de facto property regimes. In particular, these case studies show a tendency to cautiously engage in legal and bureaucratic practices, balancing them with ongoing negotiations and relationships. The key to the persistence of these commons is dependent upon what happens when times get tough and disagreements emerge. Whether families end up clearing title to their properties or not, the social networks and practices of family property can be crucial to mitigating and resolving conflicts.

### **Heirs’ Property and the Political Ecology of the Commons**

In 2002, political ecologist James McCarthy expressed his dismay that, “Some have defined political ecology as an approach specific to the Third World” (2002: 1284). As political ecologists turned their attention to studying the Global North, they focused on proving that enclosures associated with privatization and environmental governance around the world are the outcomes of the same global processes. While this “symmetry of practice” drew broad attention to global processes, it also obscured the ways that case

studies from the Global North are different (Robbins 2002; Castree 2005). In their introduction to the 2010 *Forum on Political Ecology of the U.S. South*, Patrick Hurley and Ed Carr asked “now that the debate over the validity of using political ecology’s tools in the Global North has ended...it is fair to ask: where geographically and thematically, has the field’s examination of North American cases led us?” (Hurley and Carr 2010: 100). No matter where political ecologists conduct their fieldwork the challenge now is to develop a conceptual and scalar dialectic that describes a world which is “persistently diverse”, while simultaneously acknowledging that “that this diversity arises out of multi-scaled relations such that it does not emerge *sui generis*” (Castree 2005: 541).

Taken together, the three empirical chapters presented here make an intellectual contribution by bringing together the political ecology, legal geography, and historical geography literatures in order to uncover the complexities of property relations in the Global North. In 2005, Nick Blomley asked human geographers if we *Remember Property?* His question came from a concern that geographers and other scholars tend to overlook property, to think of it as claimed only by a single owner, and easily visible through investigations of formal title.

This dominant view of property, he warned, is problematic because it “obscures the varied and inventive ways in which property actually gets put to work in the world” (Blomley 2005: 127). This dissertation has, as Blomley suggested, “taken property seriously,” by investigating the complexities and characteristics of heirs’ property in order to uncover new understandings of commons and enclosures in the Global North. In particular, this study of heirs’ property challenges our understandings of the dominance

of private property relations in the Global North.

We live in a world where everything is claimed, where states claim ultimate landownership of all lands and natural resources within their boundaries and private property shapes “our relationships not only to the resources necessary for life, but to life itself and even ourselves” (Mansfield 2008: 2). With political ecology’s focus on new forms of commodified nature like genetic information and synthetic biology (e.g. McAfee 2003; Rossi 2013) or financial instruments (e.g. Robertson 2009; Bumpus and Liverman 2011; Bigger 2013), this study of real property, ownership in land, may seem a little old-fashioned. However, even where landownership is demarcated by seemingly definite boundaries, even a basic resource like land can always be further divided, transferred, or more clearly defined to make it more easily transferrable and visible to circuits of capital. This study illustrates that even in the United States, where the strength of property law and advanced capitalism foster our tendency to overlook the diversity of property, alternative forms of ownership are still surprisingly present.

Heirs’ property is a disruption to the routine state and market practices that govern and transform property relations in the Global North. These parcels appear in the county plats and deed books, with well-defined boundaries and records of ownership. They appear as enclosed parcels that are settled into the dominant ownership model. However, their status as intestate properties obscures their ownership and blocks them from commodification and transfer. Complex and lengthy bureaucratic and litigious practices are necessary to remove these ambiguities and make these properties conform to the dominant model. Without these practices, heirs’ properties remain unsettled, obscure and ambiguous to states and markets.

These types of ambiguities and alternative forms of ownership are a common theme in scholarship on the Global South, but because this kin-based common property regime is present in the Global North, these findings are more surprising. Even in the United States, where state capacities and resources are greatest to settle property relations into a dominant model of private ownership, the state is “far from able comprehensively to monitor resource use and enforce [their] own laws and regulations” (McCarthy 2002: 1288).

This study of heirs’ property also expands our understandings of the complex historical and contemporary relationships between *de jure* and *de facto* common property regimes. My analysis establishes how enslaved African American communities used social practices to establish a property regime that was directly contradicted legal interpretations of ownership within plantation society. This *de facto* regime also influenced the patterns of legal land acquisition that followed Emancipation, and during the Jim Crow era similar social practices served as a way to protect families from legal inequities. Further, family property continues to serve as a cultural mechanism for protecting these parcels from legal vulnerabilities associated with the *de jure* form of tenancy in common.

These findings complicate the relationship between enclosure and the persistence of common property and the relationship between legal and extralegal property regimes. Historically, this marginalized community was able to effectively develop and adapt a *de facto* common property regime to transcend the limitations and risks of *de jure* property rights. Today, the survival of the African American commons and African American owned land in the Lowcountry is linked to the effectiveness of extralegal practices that

can settle disputes without exposing these parcels to litigious practices or circuits of capital. Further, some landowners have used privatization to remove the vulnerabilities of tenancy in common, then established a de facto commons through social practices within the context of legally privatized land.

These complexities show that common property regimes are far more than static systems with well-defined rules and patterns. The commons must be acknowledged as more than a persistent form of ownership. Instead, commons consist of a wide variety of overlapping forms, styles, changing social practices. Family property and heirs' property are not traditional relics, but a systems of flexible understandings of ownership and use rights, inclusion and exclusion, power dynamics and networks with the ability to cautiously utilize legal frameworks, while simultaneously transcending and interrupting them with time tested de facto practices.

What these findings suggest is a need for careful study of the overlapping and conflicting characteristics of de jure and de facto commons in order to better understand vulnerability and preservation of the commons. African Americans communities in the Lowcountry have a historical material reliance and deep cultural connection their land because it has served as a social and economic safety net, especially in rural communities. Today's landowners are faced with reconciling this history and cultural heritage with the legal vulnerabilities and economic pressures of present development patterns. They are addressing this challenge by creating and enacting new degrees and layers of ownership rights that challenge dominant notions of dualistic notions of commons and enclosures.

### **The Movement to Protect Heirs' Property**

As described in chapter four, the Uniform Law Commission drafted the Partition of Heirs' Property Act in 2010 in hopes of relieving legal vulnerabilities. In particular, the act enhances rights of first refusal, expands rights of adverse possession, and fortifies partition-in-kind as a preferable alternative to partition sales (Uniform Law Commission 2010; Mitchell 2014). A bill containing the act was introduced to the South Carolina legislature in January 2015 and unanimously approved by the House of Representatives in June. It will be referred to the Senate Committee on the Judiciary at the start of the 2016 legislative session (Smith 2014; South Carolina Legislative Services Agency 2015). Thomas Mitchel, legal scholar and a principle drafter of the act, is hopeful that it will become law in South Carolina in 2016 (Personal Correspondance, 24 June 2015).

While South Carolina legislators are mulling over this action, reports of heirs' property loss continue to appear in the pages of South Carolina's newspapers. Journalists, activists, and NGOs have raised concerns that since the local real estate market has rebounded from the Great Recession the legal and economic pressures on heirs' property are becoming more acute (McCloud 2015d). While the rate of land loss is difficult to track, recent studies by the Center for Heirs' Property Preservation (CHPP) and the American Institute of Architects have tried to quantify the rate of loss on Hilton Head Island's still developing north end. They found that over the past ten years the amount of African American owned land there has declined from 3,500 to 750-acres (McCloud 2015b).

Another example of these rising pressures is the increasing resistance to Penn Center's tax sale rescues. For the last forty years, Penn Center staff have stood before



bidders and explained the cultural importance of heirs' property, asking them to not bid against heirs who stand up when a parcel number is called. At the 2012 tax sale there was one bid against an heir, an outcome that Penn Staff referred to as "unusual" (Interview: Penn Center Staff Member, January 2012). In 2013 and 2014 county officials had to break up several heated exchanges between heirs and land speculators (McCloud 2015b). In 2015; the "majority of bidders" heeded Penn's request, but some heirs' property on Saint Helena Island was still sold (McCloud 2015a).

Rising land values also incentivize partition actions. For example, Dennis Allen purchased thirty-eight acres of land on Hilton Head Island for \$375 in 1906. After generations of intestate succession, the number of heirs grew to seventy-five and in 2009 one of the non-resident heirs attempted to clear the title. Three different lawsuits were filed and five lawyers were involved in the three-year court battle. It eventually ended in a partition sale in 2013. While the amount of the partition sale was not disclosed, the property is currently listed at \$18 million (McCloud 2015b).

Heirs' property owners on Wadmalaw remain somewhat insulated from these intensive resort-style development pressures. Aided by the emergence of the region's "conservation culture," their special rural land use zoning protects farmland, natural resources, and heirs' property (Halfacre 2012). The development plans for extending Interstate 526; which would shorten the distance between Wadmalaw and the Charleston-metro area, has also stalled. Currently, a funding shortfall and disputes between the state agencies allow Wadmalaw and Johns Island leaders, as well as environmental organizations like the Coastal Conservation League an opportunity to broaden the support for their resistance to this project (Knich 2015).

The historic African American communities of East Cooper *are* facing increased development pressure. Mount Pleasant Town Administrator Eric DeMoura has accused the residents of Phillips and other unincorporated areas of “freeloading” because they are “using roads we paid for, enjoying the parks we pay for” (Slade 2014). Leaders in Phillips worry that incorporation would result in rising property taxes and zoning restrictions would change the composition and character of their communities (Interview: President of the Phillips Community Association, February 2012). However, as Mount Pleasant moves towards annexing these communities, the legal ambiguity of heirs’ property ownership could halt their progress. State law requires that annexed property touch a town’s boundary, meaning that the time and effort it takes to clear title to heirs’ properties could slow the town’s acquisitions and protect the interior of these communities (Slade 2014).

As development pressures intensify and the legislature debates, Lowcountry landowners, activists, and NGOs are pushing forward with strategies for preserving heirs’ property. In addition to Penn Center’s presence at delinquent tax sales, families facing dispossession due to property taxes can now turn to the Pan-African Family Empowerment and Land Preservation Network. In May of 2015; this network helped redeem a 1.57-acre parcel that was lost at a previous tax sale (Pan-African Family Empowerment Network 2015). This organization provides one-time grants to landowners to redeem tax delinquent properties and has the support of the Gullah-Geechee Sea Island Coalition (White 2015).

While collective work of these organizations is essential, CHPP has earned a reputation as the central force for land preservation in Lowcountry South Carolina. Their

services include educational seminars, wills clinics to prevent further intestate succession, advice and counsel to determine the best course of legal action, and representation for heirs who want to clear title. Importantly, in order to receive legal representation from CHPP, the heirs must demonstrate a family agreement over the desired outcome of clearing title. The “Family Presentation” sessions that verify their agreement can be contentious, but CHPP will not begin the legal process until they are sure that family conflicts will not derail the process (Interview: CHPP Executive Director, July 2010; CHPP Supervising Attorney, July 2010; CHPP 2011b).

From 2005 to 2015, CHPP has educated 10,747 individuals at their seminars, consulted 1,543 landowners, helped draft 552 wills, provided 348 clients with legal services, and resolved 130 titles (Center for Heirs' Property Preservation 2015). Those numbers are growing as the organization expands its geographical service area and secures new sources of funding (Cantu 2012; Charleston Regional Business Journal Staff 2013). One of their most successful innovations, is their new Sustainable Forestry Program, which provides technical assistance for developing land management plans that will generate income to help pay for property taxes and keep homes out of foreclosure (CHPP 2013b, Behre 2015; McCloud 2015c). This program is an important part of CHPP's mission to mitigate legal vulnerabilities while also alleviating poverty and creating sustainable incomes for landowners once they clear title. To date, the program has helped provide education and assistance for 40 African American families and 4,100-acres of land (Center for Heirs' Property Preservation 2015).

## Closing Thoughts

Queen Quet: I don't think this is the end of the discussion. I just think this is the beginning. How much longer do you have? Are you in the beginning, middle, or end of your thesis.

Author: I'm probably still at the beginning. Yeah, I'm at the beginning...

Queen Quet: Not that I'm trying to run you off, but there are students that become like moss on an oak tree. Once they start off, they stay and they just keep growing and we are always seeing them, you know. We ask them: "Haven't you finished school yet?"

But it's good, and I love that there could be educational materials coming out of this. That's the thing that's needed. Cause see no matter how many of these I do someone always says, "I didn't know something" or "I got this permutation" or "let me throw this hat in the ring" (St. Helena Island Focus Group, May 2012).

This study has taken a different approach to understanding both the dispossession and retention of heirs' property. While the findings represent an alternative intellectual framework for understanding the complexities of heirs' property, the project was also proposed in hopes of making a practical impact in the efforts to preserve heirs' property.

These findings will be disseminated to the NGOs and community leaders who participated. Some of the research on *Wigfall v. Mobley et al.* was conducted while interning with CHPP and it resulted in a co-authored article with their Executive Director, Jennie Stephens (Grabbatin and Stephens 2011). Since then, CHPP has mentioned the results of these legal case studies at their educational seminars, because they help to highlight the importance of family agreement in order to avoid partition sales (Fieldnotes 2010-2012).

Beyond this minor contribution, the landowner case studies from chapter five may provide inspiration for creative solutions and new combinations of legal-

extralegal action. As Queen Quet points out in the quote above, the diverse strategies used by heirs' property owners can introduce new "permutations" in the struggle to preserve heirs' property. These case studies can serve as both educational opportunities and examples of the wide variety of strategies available to landowners.

As mentioned in the methods chapter, data collection also involved responding to landowner requests. Some interviewees requested copies of archival documents, others asked for assistance contacting government offices and NGOs. While my limited expertise fell short in some cases, these landowners are now more aware of the organizations and programs available to them. Hopefully the case studies contained here will help these landowners as they weigh their options.

Finally, several of my interviewees were enthusiastic about the historical aspects of this dissertation. Both landowners and NGOs expressed an enthusiasm for obtaining the archival documents and oral histories collected for this project. Photocopies from archival research have already been disseminated to some of these individuals and organizations. Further, some landowners were particularly interested in having their oral histories recorded because they worry that the youth will not express interest in their history until the elders have passed. Once this dissertation is complete, copies will be given to Lowcountry libraries and community archives to preserve these stories of loss and perseverance. I hope that this manuscript does their stories justice.

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## APPENDICES

### Appendix A: Glossary

The definitions in the glossary are written in the author's own words to avoid the confusion that a legal dictionary might present for non-legal scholars. Unless otherwise noted, see *Black's Law Dictionary* for further clarification.

Term	Definition
Clear Title	Property with legal ownership defined through a deed and owned without limitations, liens, or other objections.
Clerk of Court	A court official whose duties include: record keeping, processing orders and actions, and providing certifications.
Clouded Title	A title where conflicting claims, liens, or other encumbrances produce limitations or ambiguities of ownership.
De Facto	Extralegal or not officially recognized.
De Jure	Legally recognized and verifiable.
Family Property	The range of de facto practices for determining ownership and use rights through bonds of kinship.
Fee Simple	The total and clear ownership of property.
Heirs' Property	Property that has passed intestate and is held collectively by family members as tenants in common.
Intestate	When a person dies without leaving a legally verifiable will.
Master-in-Equity	A judge with the power to rule, without a jury, on real estate cases involving foreclosure, partition, and contracts.
Partition in Kind	The division of a jointly owned property and the issue of separate deeds to former co-owners.

Partition Sale	The auction of a jointly owned property and the division proceeds between co-owners.
Petition to Determine Heirs	A legal action filed in probate court to determine the identity of heirs to an intestate property.
Probate	The act of registering a will by presenting the required legal proof.
Quiet Title Action	A legal action to replace a clouded title with a clear title or titles.
Real Property	Fixed or immovable property, principally land or buildings.
Tenancy in Common	The joint ownership of property. In the case of heirs' property, co-ownership between relatives who share an undivided and equal interest.
Subtractability	Actions by individuals without a stake in communal resources that damage or interfere with sustainable use (see Berkes et al. 1989).
Tragedy of Incursion	Intertwined practices of states and markets that facilitate enclosure, rendering commons ineffective and marginalizing commons users (see McCay and Acheson 1987a, 29).
Tragedy of the Commons	A prediction that common ownership inevitably leads to environmental degradation (see Hardin 1968).

## **Appendix B: Interview Guide for Landowners**


- 1) Tell me about the history of your property?
  - a) Who originally acquired it?
  - b) How and when did it become heirs' property?
  - c) Why is this history important?
  
- 2) Who owns the property?
  - a) How do you determine who owns heirs' property?
  - b) Do some heirs have more ownership than others?
  - c) Who pays the property taxes?
  - d) Are there any plans to clear the title to this property?
  
- 3) What do you use the land for?
  - a) Who lives on the land?
  - b) Who uses the land?
  - c) How do you determine who lives on and uses the land?
  - d) Is the land divided at all?
  
- 4) What are the advantages of owning heirs' property?
  - a) How does it benefit you?
  - b) How does it benefit others?
  - c) How would keeping this land affect you?
  
- 5) What are the disadvantages of owning heirs' property?
  - a) Has owning heirs' property hindered any of your plans or ambitions?
  - b) What issues/conflicts do you face as an heirs' property owner?
  - c) Are you concerned about these issues/conflicts?
  - d) How would losing this land affect you?
  
- 6) What does the future hold for this property?
  - a) What is the best use of this property?
  - b) Do you plan to retain it or sell it?
  - c) What options, organizations, practices will you rely on to achieve that goal?



## **Appendix C: Interview Guide for Nongovernmental Organization Staff**

- 1) What is heirs' property?
  - a) What rights are associated with heirs' property?
  - b) What uses are associated with heirs' property?
  - c) How did heirs' property come about?
  - d) What is the importance of the history of heirs' property?
- 2) What are the major obstacles that heirs' property owners face?
  - a) What are the primary pressures that landowners face?
  - b) How have those pressures changed over time?
  - c) How/why do people lose heirs' property?
- 3) What is your organization doing to address these issues?
  - a) How do you identify clients?
  - b) What options do you recommend to your clients?
  - c) What additional options do you offer to your clients?
  - d) How does your organization deal with family disputes and negotiations?
- 4) Why/how do you advocate for one particular solution over others?
  - a) What are the advantages of this solution?
  - b) What land-uses will be permitted/restricted if this solution is implemented?
- 5) What is the ideal outcome you want to achieve for heirs' property owners?
  - a) Are there any recent trends that make you optimistic about the future of heirs' property?
  - b) Are there any recent trends that make you pessimistic about the future of heirs' property?

## Appendix D: Research Exemption Certificate

  
**KENTUCKY**

Office of Research Integrity  
IRB, IACUC, RDRC  
315 Kinlead Hall  
Lexington, KY 40506-0057  
859 257-9428  
fax 859 257-8995  
[www.research.uky.edu/ori/](http://www.research.uky.edu/ori/)

**EXEMPTION CERTIFICATION**

**MEMO:** Brian Grabbatin,  
1608 University Ct.  
C 101  
Lexington, KY 40503  
PI phone #: (803) -917 ext. 8959

**FROM:** Institutional Review Board  
c/o Office of Research Integrity

**SUBJECT:** Exemption Certification for Protocol No. 10-0343-X4B

**DATE:** May 18, 2010

On May 14, 2010, it was determined that your project entitled, *The Political Ecology of Heirs' Property in the United States Lowcountry*, meets federal criteria to qualify as an exempt study.

Because the study has been certified as exempt, you will not be required to complete continuation or final review reports. However, it is your responsibility to notify the IRB prior to making any changes to the study. Please note that changes made to an exempt protocol may disqualify it from exempt status and may require an expedited or full review.

The Office of Research Integrity will hold your exemption application for six years. Before the end of the sixth year, you will be notified that your file will be closed and the application destroyed. If your project is still ongoing, you will need to contact the Office of Research Integrity upon receipt of that letter and follow the instructions for completing a new exemption application. It is, therefore, important that you keep your address current with the Office of Research Integrity.

For information describing investigator responsibilities after obtaining IRB approval, download and read the document "PI Guidance to Responsibilities, Qualifications, Records and Documentation of Human Subjects Research" from the Office of Research Integrity's Guidance and Policy Documents web page [<http://www.research.uky.edu/ori/human/guidance/htm#PIresp>]. Additional information regarding IRB review, federal regulations, and institutional policies may be found through ORI's web site [<http://www.research.uky.edu/ori/>]. If you have questions, need additional information, or would like a paper copy of the above mentioned document, contact the Office of Research Integrity at (859) 257-9428.

## Appendix E: Statement of Informed Consent

You are being invited to take part in a research study about the heirs' property. This project is in support of research towards Brian Grabbatin's doctoral dissertation. He is being guided in this research by Rich Schein and Morgan Robertson in the department of Geography at the University of Kentucky. If you volunteer to take part in this study, you will be interviewed about your experiences and concerns about the threats to heirs' property. By doing this study, I hope to learn about the issues you and your community face in regards to heirs' property ownership and how you and your community respond to these pressures.

If you agree to be interviewed you are free to determine the length and location of the interview. I approximate that each interview will take about one hour, but you can stop it at any time and the interview is not limited to one hour if you have more to say about heirs' property. Participating in this project does not present any risk to you or your community. You can decide to stop participating at any time and choose not to respond to any questions you are not comfortable answering.

There is no guarantee that you will get any benefit from taking part in this study. You will not lose any benefits or rights you would normally have if you choose not to volunteer. You can stop at any time during the study and still keep the benefits and rights you had before volunteering.

I will make every effort to keep private all research records that identify you to the extent allowed by law. I may publish the results of this study in academic articles and books; however, your name and other identifying information will be kept private. All the information I collect will be stored safely in a location where only I will have access.

If you decide to take part in the study you still have the right to decide at any time that you no longer want to continue. You will not be treated differently if you decide to stop taking part in the study.

Before you decide whether to accept this invitation to take part in the study, please ask any questions that might come to mind now. Later, if you have questions, suggestions, concerns, or complaints about the study, you can contact the investigator, **Brian Grabbatin** at [REDACTED]. If you have any questions about your rights as a volunteer in this research, contact the staff in the Office of Research Integrity at the University of Kentucky at 859-257-9428 or toll free at 1-866-400-9428. We will give you a signed copy of this consent form to take with you.

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**Publications:**

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